TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~298~~ 100

THE RALEIGH AND GASTON RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN A. REID, SHERIFF, ETC.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

FILED NOVEMBER 18, 1870.

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1 To the Honorable Richmond M. Pearson, chief justice of the supreme court of North Carolina:

The petition of The Raleigh & Gaston Railroad Company, a corporation chartered by, and doing business in, the said State, respectfully showeth:

That, at the January term, 1870, of the said court, & upon the 10th day of March, a judgement was rendered dismissing an action for an injunction at the instance of your present petitioner against John A. Reid, as sheriff of Halifax County, in said State; that in such action for an injunction was drawn in question the construction of a clause of the Constitution of the United States, & that the decision made by said judgement was against the right & exemption claimed by your petitioner, the plaintiff, in the said action, under such clause of the Constitution, as appears of record in said court; & that such decision is final. Your petitioner therefore desires to prosecute a writ of error upon said judgement in the Supreme Court of the United States, & for that
2 end prays your honor to allow him the same & such other process as may be required in that case.

And your petitioner will ever pray, &c.

MOORE, &
ROGERS & BATCHELOR,
Attorneys for Petitioner.

Allowed.

R. M. PEARSON, *Ch. J. S. C.*

MARCH 7TH, 1870.

(Indorsed :) Pet'n to Ch. Justice Pearson, for writ of error.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Richmond M. Pearson, chief justice of the supreme court of North Carolina, and Edwin G. Reid, W'm B. Rodman, Robert P. Deck, and Thomas Settle, associate justices of the said court, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decission could be had in said suit between The Raleigh and Gaston Railroad Company, plaintiff, and John A. Reid, as sheriff of Halifax County, in said State, defendant, wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemption specially set up and claimed under such clause of the said Constitution a manifest error hath happened to the great damage of the said The Raleigh & Gaston Railroad Company, as by its complaint appears:

We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid
4 in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court to be then & there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error,

what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court this the 11th day of March, one thousand eight hundred & seventy.

[SEAL.] N. J. RIDDICK, *Clerk.*
Clerk of the Circuit Court of the United States for the District of North Carolina.

(Indorsed:) Writ of error.

5 UNITED STATES OF AMERICA, *ss:*

To JOHN A. REID, sheriff of Halifax County, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of North Carolina, wherein The Raleigh & Gaston Railroad Co. is plaintiff, & you are defendant in error, to show cause, if any there be, why the judgement in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richmond M. Pearson, chief justice of the said supreme court of North Carolina, this day of March, in the year of our Lord one thousand eight hundred & seventy.

R. M. PEARSON, *Ch. J. S. C.*
Chief Justice of the Supreme Court of North Carolina.

MARCH 7TH, 1870.

6 (Indorsed:) Summons to def't. Jno. A Reid.

Service accepted on behalf of John A. Reid, by me as his attorney.
TH'S BRAGG.

7 STATE OF NORTH CAROLINA:

THE RALEIGH & GASTON RAILROAD COMPANY, plaintiff,
against
JOHN A. REID, AS SHERIFF OF HALIFAX County, in said State, defendant.

Know all men by these presents that The Raleigh & Gaston Railroad Company, and A. B. Andrews, W'm W. Vass, are held and firmly bound unto John A. Reid, as sheriff as aforesaid, in the sum of five thousand dollars, to be paid to the said John A. Reid as sheriff as aforesaid, his executors and administrators, to which payment well and truly to be made the said parties bind themselves, and each of them, jointly and severally, firmly by these presents.

Whereas the above-named The Raleigh & Gaston Railroad Company hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of North Carolina, held on the first Monday in January, A. D. 1870:

Now, therefore, the condition of this obligation is such, that if the above-named The Raleigh & Gaston Railroad Company shall prosecute its said writ of error to effect, and answer all damages and costs if it

shall fail to make good its said plea, then this obligation shall be void; otherwise the shall be and remain in full force and virtue.

8 Witness the seal of the said corporation and the signature of the president thereof, and the hand and seal of the other parties thereto.

{ SEAL R. & G. R. R. CO. }

W. J. HAWKINS,
Pres. R. & G. R. R. Co.
A. B. ANDREWS. [SEAL.]
W. W. VASS. [SEAL.]

Approved. The clerk will issue a copy of the record as required by the within writ.

R. M. PEARSON,
Ch'f Justice Supreme Court.

MARCH 7TH, 1870.

9 RALEIGH & GASTON RAILROAD COMPANY *against* JOHN A. REID, DEFENDANT. } Summons.

State of North Carolina to the sheriff of Halifax County, greeting:

You are hereby commanded to summon John A. Reid, the defendant above named, if he be found within your county, to be and appear before the judge of the superior court for the county of Halifax, on the 12th Monday after the second Monday of February, 1870, and answer the complaint, a copy of which will be deposited in the office of the clerk of the superior court for said county, within three days from commencement of said court; and let him take notice that if he fail to answer the said complaint the plaintiff will take judgment against him for the sum of two thousand two hundred and sixty three $\frac{27}{100}$ dollars, with interest thereon from this time, and for costs.

Hereof fail not, and of this summons make due return.

Given under my hand and the seal of the said court this 15th day of November, 1869.

[SEAL.]

JOHN T. GREGORY,
Clerk Superior Court Halifax Co.

On the foregoing summons were the following endorsements:

"R. & G. R. R. Co. against John A. Reid. Summons. Returnable to spring term, 1870, of the sup. court of Halifax Co."

"Service accepted.

"JOHN A. REID,
"*Sheriff Halifax County.*"

"On behalf of the defendant I accept service of this summons.
"THO'S BRAGG, *Def'ts Atto.*"

10 THE RALEIGH & GASTON RAILROAD Company, plaintiff, *against* JOHN A. REID, DEFENDANT. }

The plaintiff complains against the defendant, who has been duly summoned, brought against him in the superior court of Halifax County, and alleges—

I. That the plaintiff is a corporation duly created by two acts of the general assembly of the State of North Carolina, one entitled "An act to incorporate The Raleigh & Gaston Railroad Company," which was ratified on the 29th day of January, 1851; and the other entitled "An act to amend an act, entitled an act to incorporate The Raleigh & Gaston Railroad Company," which was ratified on the 25th day of December, 1852.

II. That, under the provisions of the act first above mentioned, the individual stockholders of the said corporation did subscribe for and pay into the said corporation the sum of four hundred thousand dollars, which was received by the said corporation, and expended as provided by the said act. Thereupon the said individual stockholders of the said corporation became the purchasers from the said State of North Carolina of one-half of the franchise and entire property of every kind belonging to said corporation, and thereby became joint corporators therein with the said State.

III. That, under and by virtue of the said acts of the general
11 assembly, copies of which are herewith filed as exhibits in this action, the said corporation was duly organized, and ever since hath been, and is now, engaged, according to the requirements and privileges of the said acts, in transporting daily on its road passengers and freights of various kinds.

IV. That whilst so engaged, to wit, on the 12th day of November, 1869, it was in the possession of, and using in its business aforesaid, a certain steam engine and tender called and known by the name of "Wake," which was the sole property of the plaintiff.

V. That on said day the defendant seized said engine and tender, and took them out of the possession of the plaintiff, with intent to sell the same, and deprived the plaintiff of the use thereof.

VI. That the defendant alleges as his only excuse for said seizure, that he was sheriff of the county of Halifax, and by virtue of his office was authorized and required by the tax list of the present year, delivered to him by the board of commissioners of said county of Halifax, to demand and receive from the plaintiff the sum of $2,368 96, which sum is composed of two separate taxes, one of which is the apportioned share for the county of Halifax, laid and assessed upon the entire franchise and rolling stock jointly of the plaintiff, under and by vir-
12 tue of sec. 13 of the act entitled "An act to provide for collection of taxes by the State and by the several counties of the State, on property, polls and income," ratified on the 13th day of March, 1869, and the other sum is for taxes assessed upon certain lots of land situate in the county of Halifax, appurtenants to, and with, and forming a part of, the property of the said railroad company, and necessary to be used in *in* the successful operation of its business.

VII. That the defendant having demanded the said sum of $2,368 96 of the plaintiff, and being refused the payment thereof, he seized the said engine for the purpose of selling and raising the said sum for the two taxes aforesaid.

VIII. The plaintiff admits that the defendant is the sheriff of Halifax County; that a portion of its road lies within the county of Halifax; that its rolling stock runs over such portion; that its franchise and said stock have been assessed for a certain portion of the tax aforesaid, which portion was apportioned as the tax due the county of Halifax; that the said lots of land were assessed for the taxes aforesaid; that the plaintiff was notified of the assessment of said taxes; and that the plaintiff refused to pay the same to the defendant.

IX. Because, as the plaintiff insists, being so advised, that
13 the said charters and acts of incorporation constitute in law a contract between the said State and the plaintiff, the said corporation; and that the said act of the said general assembly, which imposes the said tax on its franchise and property, impairs the obligation of such contract, and is in violation of that provision of the Constitution of the United States, which declares that "No State shall pass any law impairing the obligation of contracts." Wherefore the plaintiff insists, that the lots aforesaid are not subject to be taxed under the said act of March, 1869, the same being a part or parcel of the said road as aforesaid. Nor are its franchise and rolling stock liable to be taxed by the State or any of its authorities; but are wholly exempt, as are also the said lots from all such taxes, for the reason aforesaid, and especially by sec. 8 of said act of 29th January, 1851, which provides as follows: "That the said railroad, and all engines, cars, and vehicles, and all the works of said company, together with all profits which shall accrue from the same, shall be vested in the said company, one-half thereof to the use and benefit of the State, and the other half to the use and benefit of the individual stockholders; and the same shall be deemed and held to be personal estate, and shall be exempt from any public charge or tax whatsoever for the term of fifteen years; and there-
14 after the legislature may impose a tax not exceeding twenty-five cents per annum on each share of the capital stock held by individuals, whenever the annual profits shall exceed eight per cent." And also by reason of sec. 8 of the said act of 25th December, 1852, which provides as follows: "That the said railroad and all engines, cars, and machinery, and all the works of said company, together with all profits which shall accrue from the same, and all the property thereof of every description shall be vested in said company, one-half thereof to the use and benefit of the State, and the other half to the use and benefit of the individual stockholders; the same shall be deemed and held to be personal estate, and shall be exempt from any public charge or tax whatsoever for the term of fifteen years; and thereafter the legislature may impose a tax not exceeding twenty-five cents per annum on each share of the capital stock held by individuals, whenever the annual profits shall exceed eight per cent."

X. That the annual profits of said stock have never exceeded eight per cent.; therefore the said corporation and its property are not liable to be taxed under this section.

XI. The plaintiff has applied to the board of commissioners of Halifax County, and demanded exemptions from said taxes for the reasons aforesaid, and the said board have refused to allow the exemptions. A copy of the proceedings before said board is herewith exhibited.

15 XII. Wherefore the plaintiff demands judgment for $5,000 00 the value of said engine and tender, with interest and costs of suit.

XIII. And forasmuch as said engine and tender are daily used, and are necessary to enable the plaintiff to discharge the duties of transporting passengers and freight, as required by its charter, and the defendant withholds and is about to sell the same, the plaintiff asks that an order be made by the judge of 6th judicial district that the sale of said engine and tender be enjoined, and that the same be delivered to the plaintiff upon giving an adequate undertaking to abide and perform the judgment of the court which may be rendered in this action.

B. F. MOORE,
Att'y for Plaintiff.

The defendant admits the facts and matters stated in the foregoing complaint to be true.

THO'S BRAGG,
Atto. for Defendant.

16 State of North Carolina to the board of commissioners of the county of Halifax:

The Raleigh & Gaston Railroad Company to the said board of commissioners, alleges—

I. That its franchise and rolling stock have been assessed for taxation by the State and county of Halifax, and the sum of $2,368 96, has been apportioned to be collected in the said county of Halifax.

II. The plaintiff is advised that its franchise and rolling stock are not liable to be taxed by the State or any of its authorities, and is altogether exempt from such taxation by sec. 8 of its charter, which was passed in the year 1862, and provides as follows: "That the said railroad, and all engines, cars, and machinery, and all the works of said company, together with all profits which shall accrue from the same, and all the property thereof, of every description, shall be vested in said company, one-half thereof to the use and benefit of the State, and the other to the use and benefit of the individual stockholders, and the same shall be deemed and held to be personal estate, and shall be exempt from any public charge or tax whatsoever for the term of fifteen years, and thereafter the legislature may impose a tax not exceeding twenty-five cents per annum on each share of the capital
17 held by individuals whenever the annual profits shall exceed eight per cent."

III. Wherefore, the plaintiff demands that its aforesaid property, consisting of its franchise and rolling stock be exempt from taxation, and the tax list corrected in this particular.

B. F. MOORE,
Att'y for Plaintiff.

At a meeting of the board of commissioners for the county of Halifax, on Saturday, 27th November, 1869, B. A. Lovenden, chairman, Cha's A. Webb and Andrew Jackson, commissioners, present, an application was made by B. F. Moore, attorney for The Raleigh & Gaston Railroad Company, praying that the taxes which had been assessed on The Raleigh & Gaston Railroad Company, for such portion of the said road lying in this county, which tax amounts to $2,368 96, should be remitted.

The application being read and duly considered, was rejected. But, considering the question at issue of too much importance to be long unsettled, give leave to the company aforesaid to take an appeal.

JOHN A. BROWN, *Clerk.*

STATE OF NORTH CAROLINA, *Halifax County:*

Know all men by these presents that we, The Raleigh & Gaston Railroad Company, principal, and , sureties, are
18 held and firmly bound to pay the State of North Carolina the sum of four thousand dollars. Witness our hands and seals the day of December, 1869.

The condition of the above undertaking is this: Whereas the above-bounden R. R. Co. hath made application in writing to the board of commissioners of Halifax County, to be released from the tax of

$2,368 96, assessed upon its franchise and rolling stock, and other property, in pursuance of the act of the general assembly, entitled "An act to provide for collection of taxes by the State, on property, polls, and income," ratified on the 13th day of March, 1869, which relief was asked upon the ground that the said company was not liable to be assessed for such tax, but was excused therefrom by virtue of sec. 8 of the charter, passed in the year 1852, and the said board denied the relief demanded in this particular, and the R. R. Co. has taken an appeal to the superior court of Halifax County. Now, therefore, if the said R. R. company shall abide by and perform the final judgment in the said superior court, then this undertaking shall be void; otherwise it shall remain in full force and effect.

[SEAL.]

R. & G. R. R. CO.,
By B. F. MOORE. [SEAL.]
G. W. MORDECAI. [SEAL.]
W. W. VASS. [SEAL.]

19 RALEIGH & GASTON RAILROAD COMPANY *against* JOHN A. REID.

AT CHAMBERS, 6TH JUD. DIS.,
N. C., Dec. 2d, 1869.

Upon reading the complaint filed in this action, and on motion of B. F. Moore, counsel for the plaintiff, it is ordered: That upon the plaintiff entering into bond with approved security in the sum of five thousand dollars, conditioned according to law, the defendant be commanded and enjoined to refrain from selling the property levied upon for taxes, until the further order of this court.

It is further ordered that, upon the execution of said bond aforesaid, the property levied upon be delivered into the custody of his agents or attorney.

S. W. WATTS, *J. S. C.*

Know all men by these presents that we, The Raleigh & Gaston Railroad Company and W. W. Vass, in the county of Wake and State of North Carolina, are held and firmly bound unto John A. Reid in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said John A. Reid, his executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and

20 dated this day of December, A. D. 1869.

Whereas the above-named Raleigh & Gaston Railroad Company applied to the judge of the sixth judicial district for an injunction to stay the collection of taxes against The Raleigh & Gaston Railroad Company by the said John A. Reid, as sheriff of Halifax County. Now the condition of this obligation is such, that if the above-bounden Raleigh & Gaston Railroad Company shall well and truly pay to the said John A. Reid, his executors, administrators, and assigns, all such damages and costs as may be awarded to him or them by the court of final hearing of the cause, then this obligation be void; otherwise to remain in full force and effect.

G. W. MORDECAI. [SEAL.]
W. W. VASS. [SEAL.]

[SEAL.]

R. & G. R. R. CO.,
By B. F. MOORE. [SEAL.]

Test: W. T. WOMBLE.

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[SEAL.]

R. & G. R. R. CO.,
By B. F. MOORE. [SEAL.]
G. W. MORDECAI. [SEAL.]
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19 RALEIGH & GASTON RAILROAD COMPANY *against* JOHN A. REID.

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N. C., Dec. 2d, 1869.

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G. W. MORDECAI. [SEAL.]
W. W. VASS. [SEAL.]

[SEAL.]

R. & G. R. R. CO.,
By B. F. MOORE. [SEAL.]

Test: W. T. WOMBLE.

21 RALEIGH & GASTON RAILROAD COMPANY
against
JOHN A. REID.

AT CHAMBERS,
Raleigh, January 18th, 1870.

Motion to vacate the injunction order heretofore granted in this case.

Counsel of plaintiff and defendant being present, and assenting to the hearing of the motion, made by the defendant, to vacate the order of injunction heretofore made in this case. Motion refused.

Whereupon an appeal to the Supreme Court is prayed, and allowed upon the defendant giving the undertaking required by law.

S. W. WATTS, *J. S. C.*

HALIFAX COUNTY:

In the superior court this 20th day of January, 1870.

RALEIGH & GASTON RAILROAD COMPANY,
plaintiff,
against
JOHN A. REID, DEFENDANT.

Whereas on the 18th day of January, 1870, the defendant moved, before his honor Samuel W. Watts, judge, at chambers, to have the injunction and injunction order heretofore made in this court vacated, which motion of the defendant was refused by his honor, and thereupon the defendant prays an appeal to the Supreme Court, which is allowed.

And whereas the appellant intends to appeal from said judgment to the Supreme Court, now, therefore, we, John A. Reid, of the
22 county of Halifax, and H. J. Hervey, of said county of Halifax, undertake, pursuant to the statute, that the said appellant shall pay all costs and damages that may be awarded against the plaintiff on such appeal, not exceeding five hundred dollars.

JOHN A. REID, *Swf.*
H. J. HERVEY.

Witness:
E. T. CLARKE.

HALIFAX COUNTY, *ss:*

John A. Reid and H. J. Hervey, above named, being severally duly sworn, say, each for himself, that he is a resident of the State of North Carolina, and worth double the specified in the above undertaking over all his debts and liabilities, and exclusive of property exempt from execution.

JOHN A. REID, *Swf.*
H. J. HERVEY.

Sworn and subscribed before me this 20th day of January, 1870.
JOHN T. GREGORY,
Clerk of Superior Court.

STATE OF NORTH CAROLINA, *Halifax County:*

In the superior court.

RALEIGH & GASTON RAILROAD COMPANY
against
JOHN A. REID.

I, John T. Gregory, clerk of the superior court of the county and State aforesaid, do hereby certify that the foregoing contains a full, true, and perfect copy and transcript of all the proceedings had
23 and taken in the above-entitled action, as appears from the original papers which are filed of record in my office; also the appeal bond, executed and accepted and herewith sent up as a part of the said record.

In testimony whereof I have hereunto subscribed my name and affixed my seal of office, at office in Halifax Town, this the 21st day of January, A. D. 1870.

JOHN T. GREGORY,
Clerk of Sup. Court of Halifax County.

24 STATE OF SOUTH CAROLINA:

Supreme court, January term, 1870.

RALEIGH & GASTON R. R. CO.
vs.
JOHN A. REID.

Upon argument of counsel, and after due consideration, Chief Justice R. M. Pearson rendered the following as the opinion of the court:

The distinction between corporations that are mere agencies of the State and corporations based on contract is fully established. (Mills v. Williams, 11 Ire., 558.) It is equally well settled that contracts made by the State with individuals in granting charters are not to be construed by the same rules as contracts between individuals. In the latter, the rule of the common law, which is the same as common sense, is, "Words are to be taken in the strongest sense against the party using them," on the idea that self-interest induces a man to select words most favorable for himself. It is otherwise when the State is a party, for it is known that, in obtaining charters, although the sovereign is presumed to use the words, in point of fact, the bills are drafted by individuals seeking to procure the grant, and that "the promoters," as they are styled in England, or the "lobby members," as they are styled on this side of the Atlantic, have the charters or acts of incorporation drafted to suit their own purposes; and a matter of this kind,
25 instead of being, in its strict sense, a contract, is more like the act of an indulgent head of a family dispensing favors to its different members, and yielding to importunity. So the courts, to save the old gentleman from being stripped of the very means of existence by sharp practice, have been forced to reverse the rule of construction, and to adopt the meaning most favorable to the grantor. In contracts between individuals it is often difficult to say what was intended to be a part of the contract, (Baum v. Stevens, 2 Ire., 411; Foggart v. Blockweller, 4 Ire., 238,) or was only an affirmation, "chaffering," (a' Anglo-Saxon word, meaning a chat about the matter,) but not in the bargain.

A horse is offered for sale. The man says, "This is as sound an animal as ever worked in harness." "Do you warrant him to be sound?" There is a magic in that word "warrant." So he says, "The horse is sound as far as I know, or have reason to believe; but if you take him at my price, it is no part of the bargain that I am to stand good, if it turns out that he is not sound. Pay me a consideration for the warranty, and that will make a difference."

Such is the law between individuals. Reverse the rule, and see how it ought to be when the State is granting charters. It is known that the State is obliged to have the means of support, and that no one set of members of the general assembly have power to impoverish the State for all time to come, or to throw the burthen of taxation more heavily upon one class of citizens than on another.

26 So the terms of the charter must be construed in reference to this known state of facts, and the State must be considered as saying, "As things now seem, a certain amount from your corporation is enough to meet the estimates."

Suppose, however, a disastrous war, or that the State loses by being security, or by the fraud of agents, is the State to perish and be without the means of support? or may it not be heard to say, "This talk about the sum you have to pay annually was no part of the bargain. For the general good, as was supposed, the franchise of being a corporation, and the right to take the land necessary for your purposes, was granted in consideration of the labor and outlay of money on your part necessary to construct the work. What was said about the sum you were to pay annually for the support of the Government was simply an incident to the contract, based on rough estimates, and was no part of the contract. No consideration was paid for it, and it is ungrateful on your part to make a question about it under this unforseen change in the *consideration* of things."

These suggestions are made as fit matter for reflection, as tending in a great degree to justify the refinements made in many of the cases of dividing corporations into several parts for the purposes of taxation: 1, the franchise privilege of association for a common purpose; 2, the stock of the corporation; 3, the shares of the members; 4, the dividends or profits. And in this way supporting a power to impose a tax on one of the parts, notwithstanding the power of taxation was seemingly exhausted by having been made on one of the other parts, so as, by

27 implication, to exempt the whole, except for the rule, that in the construction of charters the words are to be taken most strongly against the grantees.

These refinements are evidently resorted to in order to avoid an expression of the plain fact—a State cannot by contract, or in any other mode, surrender the power of taxation necessary for its existence. A question like this was presented in State v. Matthews, (3 Jon., 451.) By the words of charter, the bank of Fayetteville was authorized to issue bills of a denomination less than $3. This charter was granted in 1848. In 1854, "for the purpose of regulating the currency," an act passed prohibiting the circulation of small notes, viz: under $3.

The courts say "these positions have been stated to clear the way and present the naked question." Is authority to issue small notes conferred by the charter as a part of the essence of the contract, with the intent to put it beyond the control of all future legislation? or is it conferred as a mere incident, with the intention that it should be subject to such limitation as the legislature might at any time thereafter deem expedient to make, for the purpose of regulating the currency of

the State? This is a mere question of construction, and a plain statement seems sufficient to dispose of it. With the exception of the powers surrendered to the United States, each State is absolutely sovereign, and, with the exception of the restraints imposed by the constitution of the States and the bill of rights, all legislative powers are vested in the general assembly. It is consequently unreasonable to suppose that
the general assembly, admitting that it has the power, would
28 alien or surrender and make subject to any individual or corporation a portion of its sovereignty, and thereby disqualify itself from doing that for which these ample powers are conferred on it.

As is said in McRee v. Wilmington & R. R. R. Co., (2 Jon. 186,) we should hesitate long before bringing our minds to the conclusion that it was the intention of the legislature to take from itself the power of doing that for which all governments are organized—"promoting the general welfare," &c.

This case, and the authorities by which it is supported, fully sustain the conclusion to which we have arrived, upon a broad and liberal view of the powers of government; that all contracts between the sovereign and its citizens in bank and railroad charters are presumed to be made subject to the change of circumstances that future events may develop, and to the right and duty of the State to regulate the currency and to preserve its own existence by equal taxation.

Taking a more narrow view of the subject, and descending to the refinement, by which corporations are treated in the courts as divisible into four parts, the charter provides that the railroads and all engines, &c., and all profits and all the property of the company shall be exempt from any public charge or tax whatsoever for the term of fifteen years, "and thereafter the legislature may impose a tax not exceeding twenty-five cents per annum on each share of the capital stock held by individuals, whenever the annual profits shall exceed eight per cent."

The question is, Does the express right, after fifteen years, to
29 impose a tax of twenty-five cents on each share of the capital stock exclude, by implication, the right to tax the franchise or the land on which the road is constructed and the depots, &c., are built, with the rolling stock, &c.

No one can entertain a doubt on the subject after reading the authorities, unless he loses sight of the fact that in railroad and bank charters, and the like, the words are to be taken most strongly against the corporation, and that no intendment or implication is to be made by which a sovereign can divest itself of the right of taxation and the duty to regulate the currency, and so govern as to provide for and protect the general welfare.

State v. Petteray, (2 Jon. Eq., 366,) which was ably argued and well considered by the court, fixes the principle: a tax in the charter of twenty-five cents on each share of the capital stock does not exhaust the power of taxation, and the general assembly may impose an additional tax on the dividends, &c., &c.

Here is a corporation owning land that, to suit its convenience, is located to reach from Raleigh to Weldon. On this land is constructed a road bed. The company likewise owns parcels of land at suitable distances, on which depots, warehouses, &c., are erected. It also owns rolling stock, &c., of great value. Why should not the franchise and all of this property be liable to an ad valorem tax?

The plaintiff answers: "It was exempted from taxation for fifteen years, and individuals are supposed to have bought stock on the idea

that no tax would be imposed, except the twenty-five cents on
30 the share whenever the profits exceed eight per cent."

But, until recently, horses and farming utensils have never been taxed, and it may as well be said that this kind of property was bought on the idea that it would never be made the subject of an ad valorem tax.

For a second reason the plaintiff says: "After the expiration of fifteen years, it is in the power of the legislature to impose a tax not exceeding twenty-five cents on each share; but here is an attempt to exceed that amount, and to disregard the qualification that even twenty-five cents on the share can be exacted only when the profits exceed eight per cent."

It may be, that, according to the ruling in Attorney General v. Bank of Charlottee, (4 Jon. Eq., 386,) the tax on the shares could not have been increased from twenty-five cents, say to fifty cents; but this case recognizes the power to tax any other subject on which the tax is not imposed by the charter. As in our case, the tax spoken of in the charter is that upon the shares of stock. How can that exhaust the power of taxation in regard to the franchise, or on the land and personal property of the corporation?

It does not, unless like King Lear, the State has divested itself of all the attributes of sovereignty, and divided "the kingdom" among ungrateful children.

Order in the court below reversed. This will be certified.

Per curiam:

Upon which opinion the following judgement was entered
31 against the plaintiff:

North Carolina supreme court, January term, 1870, 434, Halifax County.

RALEIGH & GASTON R. R. CO. } Judgement.
vs.
JOHN A. REID. }

This cause came on to be argued upon the transcript of the record from the superior court of Halifax County; upon the consideration whereof, this court is of opinion that there is error in the record and proceedings of the said superior court:

It is, therefore, considered and adjudged by the court here, that the opinion of the court, as delivered by the Hon. R. M. Pearson, C. J., be certified to the said superior court to the intent that the order be reversed, and further proceedings had therein accordingly.

And it is considered and adjudged further that the plaintiff, the said Raleigh and Gaston Railroad Company, pay the costs of the appeal in this court incurred, to wit, the sum of forty-six dollars, and let execution issue therefor.

JANUARY 22ND, 1870.

32 I, William H. Bagley, clerk of the supreme court of the State of North Carolina, do hereby certify that the foregoing contains a full, true, and perfect transcript of the record in the above-entitled cause, wherein the "Raleigh and Gaston Railroad Company" is plaintiff, and John A. Reid is defendant, and the proceedings had therein in the said supreme court of North Carolina.

In testimony whereof I hereunto subscribe my name and affix the seal

of the said supreme court, at the city of Raleigh, in said State, this the second day of June, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.]

W'M H. BAGLEY.
Clerk Supreme Court of N. C.

33 *Exhibit referred to in allegation 3 of complaint.*

CHAPTER CXXIII.

AN ACT to incorporate the Raleigh and Gaston Railroad Company.

Commissioners to open books for subscriptions.

SEC. 1. *Be it enacted by the general assembly of the State of North Carolina, and it is hereby enacted by the authority of the same*, That Duncan Cameron, Richard Smith, William Boylan, George W. Mordecai, E. P. Guion, C. L. Hinton, W. W. Holden, W. J. Clark, of Raleigh; John D. Hawkins, William F. Hilliard, John D. Hawkins, jr., Isaac H. Davis, and James J. Thomas, of Franklin County; Rhodes Herndon, R. B. Gilliam, R. Kingsbury, T. B. Venable, of Oxford; John H. Eaton, of Henderson; G. D. Baskerville, H. L. Plummer, John Somerville, H. G. Goodloe, B. E. Cooke, Thomas Paschall, Samuel Phillips, Thomas E. Wilson, W'm J. Hawkins, John D. Fain, and Nat. T. Green, of Warren County; Cad. Jones, sr., Edmund Strudwick, Jno. W. Norwood, Osmund Long, Josiah Turner, sr., John U. Kirkland, of Orange County, and such other persons as may associate with them, their heirs, and assigns, shall be, and they are hereby, incorporated into a company, by the name and style of The Raleigh and Gaston Railroad Company, separate and distinct, and wholly unconnected with the company lately existing by the same name, and by that name shall be capable in law of purchasing, holding, selling, and conveying estates, real, personal, and mixed, so far as shall be necessary for the purposes hereinafter mentioned, and no further, and shall have perpetual succession, and by said corporate name may sue and be sued, may have and use a common seal and shall have and enjoy and exercise all the rights, powers, and privileges, which other corporate bodies may lawfully do, for the purposes mentioned in this act; and may, from time to time, make all such by-laws, rules, and regulations, not inconsistent with the constitution and laws of this State, as shall be necessary for the well ordering and conducting the affairs of the company, upon the following fundamental terms and conditions, nevertheless, viz:

Corporate powers, &c.

Amount of capital and manner of rebuilding road.

SEC. 2. That the capital stock of the said company shall be eight hundred thousand dollars, the money part of which shall be used for the purpose of rebuilding the road, now the property of the State, and known as The Raleigh and Gaston Railroad, with a T-iron rail, or iron of other form equally good, weighing not less than fifty pounds to the lineal yard, and other suitable materials, and to properly stock and equip the same with necessary engines and cars to do the transportation thereon; that the present railroad, known as The

Raleigh and Gaston Railroad, with all its machine
34 shops, implements, warehouses, depots, water stations, engines, and cars, and every other description of property appertaining to the same, shall form a part of the capital stock of the said company to the amount of four hundred thousand dollars, which amount shall be owned by the State of North Carolina in the said company; that solvent individuals shall subscribe for the remaining four hundred thousand dollars of the capital stock of the said company, and after having so subscribed and paid the sum of four hundred thousand dollars, towards the reconstruction of said road, and in refitting the same for public use, then the said subscribers and their successors shall be entitled to receive and hold one-half of the interest in the Raleigh and Gaston Railroad Company, as is by this act incorporated.

SEC. 3. *Be it enacted*, That it shall be lawful for the persons mentioned in the first section of this act, or any three of them, to open books, under their own management, or the direction of such other persons as they may select, and at such times and places as they may think proper, for the purpose of receiving subscriptions to the capital stock of the said company, to the amount of four hundred thousand dollars, in shares of one hundred dollars each. The times and places for receiving subscriptions shall be advertised in one or more newspapers in the State, and the books shall be kept open for ninety days. At the expiration of that time, all the books of subscriptions shall be returned to the individuals first named at Raleigh; and if it shall appear that four hundred thousand dollars shall have been subscribed to the capital stock of said company, by solvent subscribers, then the books shall be closed; and if more than four hundred thousand dollars shall have been subscribed, the same shall be reduced to that sum in fair and equal proportions to the number of shares subscribed for by each stockholder. Preference shall be given to the stockholders and obligors of the late Raleigh and Gaston Railroad Company during the first ninety days in which books are to be kept open, to subscribe all or any part of the said capital stock of the said company; and if, upon the return of the said books, the said sum of four hundred thousand dollars shall not have been subscribed, then said books shall be reopened for ninety days at such time and places, and under the direction of such commissioners as any three of the persons named in the first section
35 of this act shall designate; and if the capital stock aforesaid shall not have been subscribed at the expiration of the said ninety days, it shall be lawful to reopen said books, and keep them open until the first of October next.

Time, &c., of opening books.

Preference, &c.

SEC. 4. *Be it further enacted*, That as an inducement to the stockholders, and all such persons as may have become bound to indemnify the State against loss by reason of the loans made to The Raleigh and Gaston Railroad Company, and guarantied by the State, according to the provisions of the several acts of assembly passed in the years 1838 and

Inducement to stockholders, &c., to subscribe.

1840, to subscribe for stock in the company hereby incorporated, that whenever the sum of four hundred thousand dollars shall have been thus subscribed and shall have been paid and expended by said company in putting the Raleigh and Gaston Railroad in full and complete order, then the said stockholders and obligors shall be forever discharged from their liability to the State, by reason of the loans and guaranties aforesaid; and the governor is hereby authorized to cause the suits now pending in Wake superior court against said persons to be suspended until such time as he may be fully satisfied that the sum of four hundred thousand dollars has been subscribed and paid to said company; whereupon the said suits are to be dismissed at the cost of defendants: *Provided*, That the work be commenced within one year and completed within three years from and after the ratification of this act.

SEC. 5. *Be it further enacted*, That it shall be lawful for the executor or administrator of any deceased person who became bound in their lifetime to indemnify the State of North Carolina against loss by reason of loans made to The Raleigh and Gaston Railroad Company, and guarantied by the State according to the provisions of the several acts of assembly, passed in 1838 and 1840, to subscribe for any amount of stock in the company hereby incorporated, not exceeding the amount of said deceased person's liability to the State; and such subscriptions shall bind the estate of the testator or intestate; and the heirs, devisees, legatees, or next of kin, as the case may be, shall not charge the personal representative aforesaid as for a devastavit or otherwise; and in case the said heirs, devisees, legatees, or next of kin, shall attempt so to do, then no part of the provisions of this act for releasing the sureties to the State as aforesaid, shall enure to the benefit, relief, or discharge of the testator, or intestate, or his property and estate, whose heir, devisee, legatee, or next of kin, shall object to the subscription for stock by such executor or administrator; but the said testator or intestate, and his property and estate shall remain liable as now they are or may be, in all respects, as if this act had not been passed.

Executor or administrator may subscribe.

36

SEC. 6. *Be it further enacted*, That where the property and estate of any infant under twenty-one years of age, shall be liable to the demands of the State on account of the loan and guaranty in the preceding sections mentioned, it shall be lawful for the guardian of such infant to subscribe in behalf of his ward, for stock in the company hereby incorporated, to an amount not exceeding the sum for which the property and estate of such ward is or would be liable to the State as aforesaid; and in case the said ward should attempt to make his guardian liable to account to him or her, for anything more than the stock so subscribed and paid by his guardian, then no part of the provisions of this act for releasing the sureties to the State as aforesaid, shall enure to the benefit, discharge, or releif of the said infant's property and estate; but the same shall remain bound as it now is or may be, in all respects, as if this act had not been passed.

Guardian may subscribe.

Duty in war.

SEC. 7. *Be it further enacted*, That in case of a domestic invasion or insurrection, the said company shall transport the troops and munitions of war of the State of North Carolina, free of charge.

Road, &c., in whom vested.

SEC. 8. *Be it enacted*, That the said railroad, and all engines, cars, and vehicles, and all the works of said company, together with all profits which shall accrue from the same, shall be vested in the said company, one-half thereof to the use and benefit of the State, and the other half to the use and benefit of the individual stockholders; and the same shall be deemed and held to be personal estate, and shall be exempt from any public charge or tax whatsoever for the term of fifteen years; and thereafter the legislature may impose a tax not exceeding twenty-five cents per annum on each share of the capital stock held by individuals, whenever the annual profits shall exceed eight per cent.

No preferences &c.

SEC. 9. *Be it enacted*, That the said company shall give no undue preference to the property of one person over that of another, but as far as practicable, shall transport each in the order of time in which it shall be delivered or 37 offered for transportation, the tolls thereon being first paid or tendered. And it shall be lawful for them to charge for the transportation of persons, goods, produce, and merchandise, and for the mail, any sum not exceeding the following rates: On persons, not exceeding six cents per mile for each person, unless the distance which any person may be transported should be less than ten miles, in which case an extra charge of fifty cents may be made for taking up and putting down such person; for the transportation of produce, goods, wares, merchandize, and other articles, not exceeding an average of eight cents per ton per mile; and for the transportation of the mail, such sum as may be agreed upon between the company and the Post Office Department of the United States.

Tolls.

Votes.

SEC. 10. *Be it enacted*, That in all general meetings of the said company each stockholder shall be entitled to give one vote for each share not exceeding ten shares, and one vote for every three shares above ten shares; and it shall be lawful for the board of internal improvement to appoint some suitable person to represent the interest of the State in all such meetings, who shall have a right to vote on all questions coming before them, except in the election of the directors to be appointed by the individual stockholders.

General meetings.

SEC. 11. *Be it further enacted*, That an annual meeting of the subscribers to the stock of the said company shall be held at such time and place, in each year, as the stockholders, at their first general or at any subsequent meeting may appoint; to constitute which, or any general meeting called by the president and directors, according to the provisions of this act, the presence of proprietors entitled to a majority of all the votes which could be given by all the stockholders, shall be necessary, either in person or by proxy properly authorised; and if a sufficient number do not attend on that day or any day appointed for a general meeting called by the directors aforesaid, the proprietors who

do attend may adjourn from time to time until such general meeting shall be had.

Accounts to be rendered.

SEC. 12. *Be it further enacted*, That the president and directors shall render distinct accounts of their proceedings and disbursements of money to the annual meeting of the stockholders.

Certificates of stock.

SEC. 13. *Be it further enacted*, That the president and directors shall cause to be printed certificates of the
38 shares of the stock in the said company, and shall deliver one such certificate, signed by the president and countersigned by the treasurer, to each person for the number of shares subscribed by him, which certificate shall be transferable by him, subject, however, to all payments due or to become due thereon; and such assignee, having first caused the transfer or assignment to be entered in a book of the company, to be kept for the purpose, shall thenceforth become a member of the company aforesaid, and shall be liable to pay all sums due or to become due upon the stock assigned him: *Provided, however*, That such assignment shall in no wise exempt the assignor or his representative from their liability to the said company for the payment of all such sums, if the assignee or his representative shall be unable or fail to pay the same.

Charter, violations of.

SEC. 14. *Be it further enacted*, That when the general assembly may be of opinion that the charter hereby granted shall have been violated, it may be lawful, by joint resolution of the two houses, to direct the attorney general, with such assistant counsel as the governor or legislature may think proper to engage, to issue a writ of scire facias, returnable before the judges of the supreme court, calling upon the said corporation to show cause why their charter shall not be forfeited, subject to the same proceedings as are now prescribed by law in case of other corporations. Their books shall at all times be open to the inspection of a committee of the general assembly appointed for that purpose, and the president of said company shall biennially make a report to the legislature, on or before the third week of their session, of their receipts and expenditures, and of such other of their proceedings as he shall deem proper.

Crossing roads.

SEC. 15. *Be it further enacted*, That any railroad which may hereafter be constructed by the State or by any company incorporated by the legislature shall be at liberty to cross the road hereby allowed to be constructed, upon a level or otherwise, as may be advantageous, provided the free passage of the Raleigh and Gaston Railroad is not thereby obstructed.

Depots at intersections.

SEC. 16. *Be it further enacted*, That, whenever the railroad shall be so crossed or approached by any other railroad incorporated by this State, the said Raleigh & Gaston Railroad Company may erect a depot at or near the point of intersection, where they may receive and deliver pas-
39 sengers and freight, and take therefor the same rates of compensation, and be subject to the same regulations as at other depots; and should they fail or refuse to erect such depots, the State or company owning such intersecting road may erect one, and the company hereby incor-

porated shall receive and deliver passengers and freight at such depots, under the same regulations as aforesaid, unless the same shall be rendered impracticable by the situation of the railroad at that place.

Dividends.

SEC. 17. *Be it further enacted*, That the profits of the said company shall be divided annually or semi-annually, at the pleasure of the said company, one-half thereof to the State of North Carolina, to be paid to the public treasurer of the State, and the other half among the individual stockholders.

Iron may be sold.

SEC. 18. *Be it further enacted*, That it shall be lawful for the said president and directors to sell the iron on the Raleigh and Gaston Railroad, and apply the proceeds thereof to the reconstruction of said road.

Circumstances under which governor may sell the road.

SEC. 19. *Be it further enacted*, That if, by the first day of October next, a company shall not be organized according to the terms of the foregoing act, it shall be the duty of the governor, and he is hereby required so to do, to cause all operations on said Raleigh and Gaston Railroad to cease, and to discharge all the persons employed, except so many as, in the opinion of the governor, may be necessary to take care of the public property, and to advertise said road and the appurtenances for sale in two papers in the town of Raleigh, one in Petersburg, Richmond, Philadelphia, New York, and Boston. The said sale to be upon the following terms and conditions, viz: Any company of individuals who will contract, with good and sufficient security, to put said road in good order with a T-iron rail, or iron of other form equally good, weighing not less than fifty pounds to the lineal yard, and to properly stock and equip the same with the necessary engines and cars to do the transportation thereon, shall be incorporated as a body corporate, with all the rights and privileges thereunto belonging, under the style and designation of The Gaston and Raleigh Railroad Company; and the governor is herein authorized and required to sell said company hereby created the Raleigh and Gaston Railroad, with all the appurtenances, for the sum of five hundred thousand dollars, with interest from the day of sale, payable in ten annual instal'ments of fifty thousand dollars each, together with the whole accruing interest,; the first instal'ment of fifty thousand dollars, with all the interest, to be paid at the expiration of the first year from the day of sale, and the remainder at the end of each succeeding year until the whole debt and interest are paid. The governor is herein directed to take a mortgage on said road and appurtenances for the security of said debt of five hundred thousand dollars; and in making his advertisement inviting proposals from purchasers, to give such description of the road as may give strangers desiring the investment an accurate idea of the character of the work and the capacities of the country through which it runs.

SEC. 20. *Be it enacted*, That this act shall be and continue in force for seventy-five years from and after its ratification.

[Ratified 29th January, 1851.]

41 *Exhibit referred to in allegation 3 of complaint.*

AMENDED CHARTER.

Whereas, by an act passed at the session of the general assembly for the year 1850–'51, entitled "An act to incorporate The Raleigh and Gaston Railroad Company," certain commissioners were appointed to receive subscriptions of stock to the said Raleigh and Gaston Railroad Company, to the amount of four hundred thousand dollars, in shares of one hundred dollars each; and whereas the said commissioners received such subscriptions, and duly returned the same, whereupon such proceedings were had pursuant to the provisions of said act, as to form the said subscribers into a body politic and corporate, under the name and style of "The Raleigh and Gaston Railroad Company;" and whereas there are, in the said act, sundry omissions and imperfections, for remedy thereof:

SEC. 1. *Be it enacted by the general assembly of the State of North Carolina, and it is hereby enacted by the authority of the same*, That the original subscribers to the stock of the corporation created by the said act, their executors, administrators, and assigns are hereby declared to be a body politic and corporate under the name and style of "The Raleigh and Gaston Railroad Company," separate and distinct from, and wholly unconnected with, the company formerly existing by the same name, and shall have, and are hereby declared to have,
42 all the rights, privileges, and authorities of a body politic and corporate, and by that name shall be capable in law of purchasing, holding, selling, and conveying estates, real, personal, and mixed, so far as shall be necessary for the purpose hereinafter mentioned and no farther; and shall have perpetual succession, and by said corporate name may sue and be sued, may have and use a common seal, and may, from time to time, make all such by-laws, rules, and regulations as may be necessary for the well ordering and conducting of the affairs of the said corporation not inconsistent with the constitution and laws of this State, nor with the following fundamental terms and conditions, to wit:

SEC. 2. *Be it further enacted*, That the capital stock of said company shall consist of eight hundred thousand dollars, (except as hereinafter provided,) to be held as follows, to wit: one-half thereof, or four hundred thousand dollars, by the State of North Carolina, in consideration of the transfer and assignment, by the said State, as hereinafter provided, to the said corporation, of that railroad heretofore known as the Raleigh and Gaston Railroad, and now the property of the said State, together with all its machine shops, implements, warehouses, depots, water stations, engines, and every other description of property, real, personal, or mixed, appertaining to the same; and the other half of the said capital shall be held and owned in shares of one hundred dollars each, by those individuals who subscribed for the same, according to the returns of the said original commissioners, their executors, administrators, or assigns; and whenever it shall appear by the certificate of the president and treasurer of the said corporation that the said sum of four hundred thousand dollars hath been actually paid
43 in by the said subscribers, and expended by the said company in rebuilding the Raleigh and Gaston Railroad with an iron rail weighing not less than fifty pounds to the lineal yard, and in the purchase of the necessary cars, engines, and other suitable materials for properly stocking and equipping the road, so as to do the transporta-

tion thereon, then it shall be the duty of the governor of the State for the time being, and he is hereby authorized and required, under the great seal of the State, to transfer and convey to the said corporation the said Raleigh and Gaston Railroad, with all its fixtures and equipments hereinbefore mentioned.

SEC. 3. *Be it further enacted*, That the State of North Carolina shall be entitled to three directors in the said company, to be annually appointed by the board of internal improvements, and at the annual meetings of said company the individual stockholders shall have power and authority to elect four directors, citizens of the State, who, with the directors on the part of the State, shall have power to elect a president out of their own body, to manage all the affairs of the said company, and the said directors shall continue in office until their successors shall have been elected. The president, with any three or more of the directors, or in the absence of the president, any four of the directors, who shall appoint one of their own body president pro tem., shall constitute a board for the transaction of business. In cases of vacancy in the office of president or any director, from death, resignation, or otherwise, such vacancy shall be supplied by appointment of the board until the next annual meeting: *Provided*, That whenever the State shall transfer its
44 stock, in whole or in part, the State shall have only one director for every thousand [shares] which it may retain in the stock of said company.

SEC. 4. *Be it further enacted*, That an annual meeting of the subscribers to the stock of the said company, shall be held, at such time and place in each year as the stockholders, at their general or at any subsequent meeting may appoint, to constitute which, or any general meeting called by the president and directors according the provisions of this act, a number of persons owning a majority of the shares of stock held by individuals in said corporation, shall be present either in person or by proxy; and if a sufficient number to constitute a meeting do not attend on the day appointed, those who do attend shall have power to adjourn from time to until a meeting shall be formed.

SEC. 5. *Be it further enacted*, That in all general meetings of the said company, each stockholder shall be entitled to give one vote for each share not exceeding ten shares, and one vote for every three shares above ten shares; and it shall be lawful for the board of internal improvements to appoint some suitable person to represent the interest of the State in all such meetings, who shall have a right to vote on all questions coming before them, except in the election of the directors, to be appointed by the individual stockholders.

SEC. 6. *Be it further enacted*, That the said president and directors shall have full power and authority, to make contracts, with any person or persons on behalf of the said company for reconstructing said road and performing all other works which from time to time may be
45 necessary for the completion and repairs of the said road; to require from the individual stockholders from time to time such advances of money on their respective shares as the wants of the company may demand, until the whole of their subscriptions shall be advanced; to call, on any emergency, a general meeting of the stockholders, giving one month's previous notice thereof, in one or more newspapers; to appoint a treasurer, clerk, and other officers, as they may require, and generally to transact all the necessary business of the company during the intervals between the general meetings of the stockholders: *Provided*, That no loan, which may be equivalent to an increase of the capital stock of said company, and for which the assignable bonds, or other

securities of the said company are to be given, shall be made by the said president and directors, unless such loan be first authorized, at a general meeting of the stockholders, and in the event of such loan being made, no dividend shall be paid upon any stock holden in said company until the interest upon such debts shall have been paid or reserved out of the profits; and a sinking fund equivalent to at least six per centum per annum, on such debt shall have been likewise reserved, to be invested by the president and directors, in some good and valid security: *Provided, further*, That all loans, which may have been heretofore or may be hereafter authorized by the said stockholders in general meeting, shall be valid and obligatory upon the said corporation.

SEC. 7. *Be it further enacted*, That if any stockholder shall fail to pay the sum required of him by the president and directors within one month after the same shall have [been] advertised in one or more convenient newspapers, it shall and may be lawful for the said pre-
46 sident and directors to sell at public auction and to convey to the purchaser the share or shares of such stockholders so failing, giving one month's previous notice of the time and place of sale in manner aforesaid, and, after retaining the sum due and charges of sale out of the proceeds thereof, to pay the surplus, if any, to the owner, or his legal representative: and if the said sale shall not produce the sum required to be advanced, with the incident charges attending the sale, then the said president and directors may recover the balance from the original subscriber, or his assignee, or the executor or administrator of either of them, by suit in any court of record having jurisdiction thereof, or by warrant before any justice of the peace of the county of which he is a resident, and any purchaser of the stock of the company under such sale shall be subject to the same rules and regulations as the original proprietor. It shall, nevertheless, be lawful for the said president and directors, if they deem it expedient, instead of selling the stock of delinquent subscribers, as contemplated by this section, to recover such sums as may be due the *the* said company from delinquent subscribers by suit in any court of record having jurisdiction thereof, or by warrant before any justice of the peace of the county in which such delinquent stockholder is a resident.

SEC. 8. *Be it further enacted*, That the said railroad and all engines, cars, and machinery, and all the works of said company, together with all profits which shall accrue from the same, and all the property thereof of every description shall be vested in the said company, one-half thereof to the use and benefit of the State, and the other half to the use and benefit of the individual stockholders, and the same
47 shall be deemed and held to be personal estate, and shall be exempt from any public charge or tax whatsoever for the term of fifteen years, and thereafter the legislature may impose a tax not exceeding twenty-five cents per annum on each share of the capital stock held by individuals, whenever the annual profits shall exceed eight per cent.

SEC. 9. *Be it further enacted*, That in case of domestic invasion or insurrection, the said company shall transport the troops and munitions of war of the State of North Carolina free of charge.

SEC. 10. *Be it further enacted*, That the said company shall give no undue preference to the property of one person over that of another, but as far as practicable shall transport such in the order of time in which it shall be delivered or offered for transportation, the tolls thereon being first paid or tendered; and it shall be lawful for them to charge for the transportation of persons, goods, produce, and merchan-

dise, and for the mail, any sum not exceeding the following rates: On persons, not exceeding six cents per mile for each person, unless the distance which any person may be transported should be less than ten miles, in which case, an extra charge of fifty cents may be made for taking up and putting down such persons; for the transportation of produce, goods, wares, merchandise, and other articles not exceeding an average of eight cents per ton, and for the transportation of the mail, such sum as may be agreed upon between the company and the Post Office Department of the United States.

SEC. 11. *Be it further enacted*, That the president and directors shall render distinct accounts of their proceedings and disbursements of money to each annual meeting of the stockholders.

48 SEC. 12. *Be it further enacted*, That the president and directors shall cause to be printed certificates of the shares of the stock in the said company, and, whenever the terms hereinbefore mentioned shall have been complied with, shall deliver one such certificate, signed by the president and countersigned by the treasurer, to each person for the number of shares subscribed by him, her, or them, or to the assignee of such subscribers, which certificate shall be transferable, either in person or by attorney, on the books of the said company, and on each such transfer the assignee shall henceforth become a member of the said company and shall be entitled to all the privileges and subject to the rules and regulations of the same.

SEC. 13. *Be it further enacted*, That whenever the general assembly may be of opinion that the *characters* [charters] hereby granted shall have been violated, it may be lawful, by joint resolution of the two houses to direct the attorney general, with such assistant counsel as the governor or the legislature may think proper to engage, to issue a writ of scire facias returnable before the judges of the supreme court, calling upon the said corporation to show cause why their charters shall not be forfeited, subject to the same proceedings as are now prescribed by law in case of other corporations. Their books shall be at all times open to the inspection of a committee of the general assembly, appointed for that purpose, and the president of said company shall biennially make a report to the legislature on or before the third week of their session, so long as the State shall remain a stockholder, of their receipts and expenditures and of such other of their expenditures as he shall deem proper.

49 SEC. 14. *Be it further enacted*, That any railroad which may hereafter be constructed by the State, or by any company incorporated by the legislature, shall be at liberty to cross the road hereby allowed to be reconstructed, upon a level or otherwise, as may be advantageous: *Provided*, The free passage of the Raleigh and Gaston Railroad be not thereby obstructed.

SEC. 15. *Be it further enacted*, That whenever the said railroad shall be so crossed or approached by any other railroad incorporated by this State, the said Raleigh and Gaston Railroad Company may erect a depot at or near the point of intersection, where they may receive and deliver passengers and freights, and take therefor the same rates of transportation and be subject to the same rules and regulations as at other depots, and should they fail or refuse to erect such depots, the State or company owning such intersecting road may erect one, and the company hereby incorporated shall receive and deliver passengers and freights at such depots, under the same regulations as aforesaid, unless the same shall be rendered impracticable by the situation of the railroad at that place.

SEC. 16. *Be it further enacted*, That the profits of the said company

shall be divided annually or semi-annually, at the pleasure of said company, one-half thereof to the State of North Carolina, to be paid to the public treasurer of the State, and the other half among the individual stockholders, according to their respective shares.

SEC. 17. *Be it further enacted*, That it shall be lawful for the said president and directors to sell the iron on the Raleigh and Gaston
50 Railroad and apply the proceeds thereof to the reconstruction of the said road, except so much of the said iron as was purchased of Joseph Anderson, of Richmond, Virginia.

SEC. 18. *Be it further enacted*, That to enable the said Raleigh and Gaston Railroad Company to effect a junction and form an actual connection with the North Carolina Railroad, whenever the superstructure shall have been laid on that part of the road of the North Carolina Railroad Company lying between Raleigh and Goldsboro', as provided in the 52d section of the act incorporating the North Carolina Railroad Company, the president and directors are hereby invested with full powers and authority to make all necessary contracts for the construction of said road and to resort to the same means for purchasing or condemning such lands as may be required therefor as are provided in the act incorporating the North Carolina Railroad Company.

SEC. 19. "And whereas it is provided by the 49th section of the act incorporating the North Carolina Railroad Company," that whenever "The Roanoke Railroad Company or the Seaboard and Roanoke Railroad Company, with or without the aid of individuals, shall subscribe to The Raleigh and Gaston Railroad Company one-half of the sum necessary to construct a railroad from some convenient point on the Raleigh and Gaston Railroad, near the Littleton depot, or any point between that depot, Roanoke River, and the town of Weldon, or any point in the neighborhood thereof, so as to connect with the Wilmington and Raleigh Railroad, and the Seaboard and Roanoke Railroad, and
51 shall expend the said sum in forming the said connection, then the said Raleigh and Gaston Railroad shall be extended to the said town of Weldon, or neighborhood thereof; and the public treasurer is hereby authorized and directed to subscribe for an equal sum for and in behalf of the State, and pay for such subscriptions out of any money in the treasury not otherwise appropriated; and for the want of such money in the treasury, the public treasurer is hereby authorized to borrow the sum at a rate of interest not exceeding six per cent. per annum, and to issue bonds payable at any time within ten years, for not less than five hundred dollars each;" and whereas the said Seaboard and Roanoke Railroad Company hath already subscribed to the said Raleigh and Gaston Railroad Company the sum of seventy-five thousand dollars, for the purpose of constructing said road, which subscription hath been accepted by the stockholders of the said Raleigh and Gaston Railroad Company; and whereas the said road hath been already located and commenced, and a large portion of said subscription hath already been paid by the said Seaboard and Roanoke Railroad Company towards the construction of said road; and whereas such connection is deemed of great importance to the said Raleigh and Gaston Railroad and to the people of this State: *Be it therefore enacted*, That the said above-recited section is hereby reaffirmed and reënacted and declared to be a part of the charter of said Raleigh and Gaston Railroad Company, with the following provisions and amendments: "Now, that for the purpose of rendering the same effectual and guarding the interest of the [*of the*] State, and of the said Raleigh and Gaston Railroad Company, William Collins, Francis Mallory, and Samuel S. Royster, with the agent or

representative of the State, appointed by the board of internal
52 improvements, are hereby appointed commissioners to superintend the construction of said connection, and the disbursement of the funds intended to be applied to the same, with power to employ a treasurer for the safe keeping and disbursing the funds, and to require from said treasurer such bonds as they may deem proper for the faithful discharge of his official duty.

SEC. 20. *And be it further enacted*, That said commissioners shall have, and are hereby declared to have, all the powers and rights necessary to effect the construction of the said connection, and may in their names commence and prosecute to judgment all such proceedings as may be requisite and proper, for the purpose of condemning any lands which may be required for the construction of said road, in the manner and on the same process and conditions as are prescribed in the act incorporating the said North Carolina Railroad Company; and whereas it may be necessary for The Raleigh and Gaston Railroad Company to form a connection from the town of Weldon, with the navigable waters of the Roanoke River below said town, so as to connect with the steamboats and vessels navigating the Roanoke River and Albemarle Sound:

Therefore be it enacted, That the president and directors of the said Raleigh and Gaston Railroad Company be, and they are hereby, authorized and empowered, whenever they may deem it expedient, to extend their railroad to the navigable waters of the Roanoke River, and they are hereby vested with full power and authority to make all necessary contracts for the construction of said railroad, and to resort to the
53 same means for purchasing or condemning such lands as may be required therefore, [therefor,] as are provided in the act incorporating the North Carolina Railroad Company.

SEC. 21. *Be it further enacted*, That whenever the said road shall have been completed, it shall be the duty of the said commissioners to make out a duplicate return of their proceedings, stating the particulars of the cost of the construction of said road, one of which shall be made to the governor of the State, the other to the president of The Raleigh and Gaston Railroad Company, and upon the same being accepted, the cost of said construction shall be added to and constitute a part of the capital stock of the said Raleigh and Gaston Railroad Company, at the rate of one share for each hundred dollars of such cost, and shall vest one-half in the State of North Carolina, and one-half in such corporation or individuals as may have subscribed to the said stock, according to the respective amounts of such subscription, their executors, administrators, or assigns, and shall be for such amount an increase of the capital stock of said Raleigh and Gaston Railroad Company over and above the sum of eight hundred thousand dollars hereinbefore declared to be the capital of the said company, and thereupon the said Raleigh and Gaston Railroad shall be extended to the said town of Weldon, or such point in the vicinity thereof as such connection may be formed, and all the lands purchased or condemned for the construction of said road, together with all materials used in the construction thereof, depots, warehouses, and all other property pertaining to the same, and all privileges, rights, and powers which may be necessary for doing the transportation of freights and passengers on said road, shall be, and the same are hereby,
54 declared to be vested in the said Raleigh and Gaston Railroad Company in the same manner and to the same intent as if such connection had constituted a portion of the original Raleigh and Gaston Railroad.

SEC. 22. *Be it further enacted*, That in the event of vacancy in the said

board of commissioners by death, resignation, or otherwise, such vacancy shall be supplied by the president and directors of The Raleigh and Gaston Railroad Company.

SEC. 23. *Be it further enacted*, That it shall and may be lawful for the president and directors of the said Raleigh and Gaston Railroad Company to contract with the president and directors of the Roanoke Valley Railroad, or with the president and directors or managers of any other railroad connecting with the said Raleigh and Gaston Railroad, for doing the transportation of freight and passengers on such road or roads upon such terms as may be agreed on between them.

SEC. 24. *Be it further enacted*, That this act shall take effect immediately from and after its acceptance by three-fourths of the stockholders of said Raleigh and Gaston Railroad Company in general meeting assembled—acceptance to be signified to the governor of the State by the president of said company, under the great seal of the same, and shall continue in force for the term of ninety years from and after such acceptance.

[Read three times, and ratified in general assembly, this 25th day of December, A. D. 1852.]

(Indorsement on cover:) No. 298. The Raleigh and Gaston Railroad Company, plaintiff in error, vs. John A. Reid, sheriff, &c. N. Carolina sup. court. Filed 18th November, 1870.

In the Supreme Court of the United States.

DECEMBER TERM, A. D. 1870.

THE WILMIMGTON AND WELDON R. R. Co.
vs.
J. A. REID, *Sheriff, &c.* } No. 297.

THE RALEIGH AND GASTON R. R. Co.,
Plaintiff in Error.
vs.
JOHN A. REID, *Sheriff, &c.* } No. 298.

Brief for Plaintiff in Error.

These causes come up by writ of error to the Supreme Court of North Carolina. They involve the same questions.

THE CASE.

The proceedings at law in each case were commenced in the superior court of Halifax county by a writ and complaint in the nature of an action of replevin, to obtain possession of an engine and tender seized by the defendant as sheriff of Halifax county aforesaid, and about to be sold for payment of taxes assessed upon the franchise and rolling stock of the company. Record, p. 3.

There is in the record an application by the plaintiff to the board of commissioners of the county of Halifax for the correction of the tax list so as to exempt the property of the company from taxation, which was refused, with leave to the plaintiff to appeal. Records, p. 5. 5.

THE DECLARATIONS

Show that the Wilmington and Weldon Company was chartered by an act of the legislature of North Carolina, passed , A. D. 1833; and the Raleigh and Gaston Company was chartered by the legislature of North Carolina by an act and amendment passed, respectively on the 29th of January, 1851, and 25th of December, 1852. All of which are set out in the records.

The declarations set up these acts as a contract between the State and company, protected by the Constitution of the United States.

The declarations show that the franchises and rolling stock of the companies were assessed for taxation by the State and the county of Halifax, in two parts—one, the apportioned share for the county of Halifax, assessed in each case upon the entire franchise and rolling stock jointly of the plaintiffs, and the other a tax assessed upon certain lots of land in Halifax county, appurtenant to and forming part of the property of the company, and necessary to its business.

They further allege the demand by the sheriff for payment of said taxes, the refusal of the companies to pay, and the seizure of the engines for the purpose of being sold, &c.

Upon this complaint and the motion of the plaintiff, and the filing of a bond for $5,000, the defendant was enjoined from selling the property, and ordered to deliver it up to the plaintiff. Record, p. 7.

The cause then came on to be heard upon a motion of the defendant to vacate the injunction order, which motion being refused, an appeal was prayed and allowed to the Supreme Court of North Carolina. Record, p. 8.

At January term, 1870, the cause was heard. The Supreme Court pronounced an opinion that the tax was valid, reversed the order of the superior court, and re-

manded the cause, with directions for further proceedings in accordance with the opinion, which was also ordered to be certified to the said court. W. Rec., p. 9. R. Rec., 12.

This was a final determination of the controversy, being a decision that upon the case stated in the declaration the plaintiff could not recover.

THE JURISDICTION

Of this court is under that clause of the judiciary act giving jurisdiction in cases where a decision has been made by the highest State court maintaining the validity of a State statute, which has been drawn in question on the ground of its being repugnant to the Constitution of the United States.

THE STATE STATUTE

In this case, is one imposing a tax on the franchise and rolling stock, and real estate of the company, plaintiff in error, the same being by its charter exempt from taxation, and the clause of the Constitution relied on, is that which prohibits a State to pass any law impairing the obligation of a contract.

The first question is whether there existed a contract between the company and the State exempting the former from the tax imposed, as set forth in the declaration.

The tax law is set out in the declaration in the Wilmington and Weldon R. R. case, as follows:

"Every guardian, executor, administrator, or trustee shall in like manner, but in a separate list, give in the property held by him in that capacity. The value of the franchise of every railroad, canal, turnpike, plank road, navigation and banking company shall be given by the president or chief officer of the said several coporations on the day fixed by this act for the giving in of taxable property to the treasurer of the State, and shall be assessed and valued by the said treasurer, the auditer, and the governor of the State, and their valuation shall be re-

turned to the county commissioners of any county in which any part of said roads and canals or navigation works shall be, and the tax upon such franchise so valued shall be the same as upon property of equal value, and the tax collected in each county and township shall be in proportion to the length of such road, canal, or works lying in such county or township respectively, and such taxes shall be collected as other taxes are by law required to be. The rolling stock of every railroad company and the vessels employed by any canal or navigation company in its canal or works shall be valued with the franchise." Rec., p. 3.

The taxes imposed are upon the franchise and rolling stock of the company, and upon lots of land appurtenant to and forming part of the property of the company, and necessary to be used in the successful operation of its business. Record, p. 5.

The G. & R. charter, section 8, exempted "the railroad and all the engines, cars, and vehicles, and all the works of said company from any public charge or tax whatsoever for the term of fifteen years, and thereafter the legislature may impose a tax not exceeding twenty-five cents per annum on each share of the capital stock held by individuals, whenever the annual profits exceed eight per cent."

The said provision, in the same words, is found in the amendatory act set forth in the declaration, except that this act also exempts "all the property thereof [of the company] of every description." G. & R. Rec., p. 16. 21. The W. & W. charter, sec. 19, exempts every possible description of property. W. & W. Rec., p. 15.

Then does this act exempt franchise and rolling stock, and the lots? If it exempted either, the seizure to satisfy the whole demand was unlawful.

The rolling stock, under the enumeration of engines, cars, and vehicles, is specifically exempted. The land was the property of the company, held under the authority given in the 1st section of the act. to hold land necessary

for its operations, and averred in the declaration to be necessary for that purpose. Laws of 1852, pp. 527–8.

The franchise is embraced by the description of "propperty." It is defined by C. J. Redfield, in *Thorp* vs. *Rutland R. R. Co.*, 27 Verm. Rep., 140, to be "the privilege of operating the road and taking fare and freight."

The franchise is a vested *property* springing from the charter. 1 Am. L. Rev. 471–2. *Gordon* vs. *Appeal Tax Court*, 3 How., 133 at 150.

If a franchise be taken to construct a railroad, it must be paid for as property. Redfield on Railways, p. 129, § 70; Angell and Armes on Corporations, § 4 and § 737.

If the charters be contracts between the State and the corporations, they cannot be impaired by the legislature. They stand upon the same footing as contracts between persons; and by judicial interpretation, they have ever so stood from the formation of the State constitution of December, 1776, to that of July, 1868, when it was provided by the latter constitution, (Art. 8, Sec. 1,) that all laws thereafter passed respecting corporations, "may be altered from time to time or repealed."

In the construction of the Constitution of 1776, it was a uniform principle without exception, that all political powers which were not granted to the general Government, nor forbidden by its constitution to be exercised by the State, were vested in the general assembly of the State to be exercised at its discretion, unless that body was specially forbidden by the constitution of the State to exercise them.

Within these limits the powers of the legislature of the State were soverign to all intents and purposes. Under this view of the constitutional power of the State government of North Carolina up to July, 1868, it was, at all times, uniformly held by its courts, that the legislature could make an irrepealable contract between the State

and individuals, binding, in like manner and with the same force, as contracts between persons, subject only to the right of eminent domain over its own soil.

"The government of North Carolina is not one of generally delegated powers. It is only one of limited and restricted power." *Railroad Company* vs. *Davis*, 2 Dev. and Bat., 467–8, (N. C. Rep.) *Trustees of the University* vs. *Foy*, 2 *Hay*, 310, 374, *S. C.*, 1 Murp., 58, (N. C. Rep.) "A legislative charter to a private corporation, is a contract of inviolable obligation; and the State cannot constitutionally pass any law imparing the contract." *Bank of the State* vs. *The Bank of Cape Fear*, 13 *Ired.*, 75, at *p.* 81, (N. C. Rep.)

"Legislative representives may order and enact what to them may seem meet and useful upon all subjects and in all matters, except those in which their action is restrained by the Constitution; and such order and enactment is obligatory alike on all citizens, including those who are by a public duty to execute the laws as well as those on whom they are to be executed." *Hope* vs. *Henderson*, 4 Dev. 1, at p. 7., (N. C. Rep.)

"The great and essential difference between governments, as distinguished one from another by their constitutions, consists in the greater or less personal liberty of the citizen, and the greater or less security of private right against the violence or seizure of those who are the government for the time being. It is true, the whole community may modify the rights which persons can have in things, or at their pleasure abolish them altogether."

"But when the community allows the right and declares it to exist, that constitution is the freest and best which forbids the government to abolish the right, or which restrains the government from depriving a particular citizen of it; in other words, public liberty requires that

private property should be protected from the government itself." *Hoke* vs. *Henderson*, pp. 12 and 13.

2. Supposing that the provision, exempting the corporations from taxation, is, in the nature of a contract, the only clause in the State constitution which can possibly affect its obligation on the State, is Sec. 3 of the Declaration of Rights, (a part of the constitution of 1776,) which declares "*That no man or set of men are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services.*

The grant of such "emoluments or privileges," is exclusively the subject of legislative determination, at the time of the grant, and was deemed by the judiciary of the State forty years ago to be then so settled, and has never been questioned since.

In *Yadkin Navigation Company* vs. *Benton*, 2 Hanks, 10, (N. C. Rep., 1822,) the court, at page 13, says "the constitutional objections appear to be equally untenable. Exclusive emoluments and privileges may be granted in consideration of public services. The nature of such services, whether great or small, certain or contingent, is not a subject of judicial inquiry; it properly belongs to, and may be safely entrusted with, legislative wisdom.

Nor is this charter forbidden by that clause of the Declaration of Rights which condemns monopolies and perpetuities."

"It requires no argument to prove that it is not included in the first term; and the other imports property locked up from the uses of the public, and which no person has power to alienate. Whatever emoluments are granted to these subscribers, the grant was made in contemplation of a great national benefit, to be derived from the union of their funds and intelligence, and under a certainty that without such incitement, individual enterprise could not be raised into action, and the main sources

of the public property would continue as nature formed them."

3. The charters of the railroad companies are compacts or contracts by statute between the State and stockholders, and cannot be changed without the consent of each party; and such rights as are legally vested in the companies cannot be controlled or destroyed by any subsequent statute, unless a power for that purpose be reserved in the acts of incorporation: Wales *vs.* Stetson, 2 Mass. Rep., 143; Enfield Tolbribge Co. *vs.* Con. River, Co., 7 Con. Rep., 28: Fletcher *vs.* Peck, 6 Cr., 87; State Bank of Ohio *vs.* Knoop, 16 How., at 389; Town of Pawlet *vs.* Clarke, 9 Cr., 202; Tenett *vs.* Taylor, Id., 43; Dartmouth College *vs.* Wodard, 4 Wh., 510; ~~A. Aoucorp, §767, and cases cited~~. This has ever been the rule of construction for such charters in North Carolina. Mills *vs.* Williams, 11 Ired., 568, at 561, (N. C.;) Bank of the State *vs.* Bank of Cape Fear, 13 Ired., 75, N. C.; Att'y Gen. *vs.* Bank of Charlotte, 4, Jones, Eq., 287, (N. C.)

4. Where there is no stipulation by the sovereign against taxation, taxes may be laid. *Prov. Bk.* vs. *Billings*, 4 Pet., 514; *State* vs. *Petteway*, 2 Jones Eq., 396, (N. C.)

5. Where there is such a stipulation it is entitled to a sensible construction so as to effect its obvious purpose, and shall be regarded as a contract, if so intended. *State Bank of Ohio* vs. *Knoop*, *ante*; *Ohio Land T. Co.* vs. *Debolt*, ~~18~~ How., 416, Taney's Opinion at page ~~322~~; *Bank C. Fear* vs. *Edwards*, 5 Ired., 516, (N. C.); See Opinion *Gordon* vs. *Appeal Tax Court*, 3 How., 148; *Home of the Friendless* vs. *Rouse*, ~~ante~~.

6. A sufficient consideration for all grants by the sovereign is always presumed, and is ever valid until it may be vacated for fraud or other good reasons, which must be done in a judicial proceeding.

Consideration for its acts being always presumed, the words of grant are to be construed alike, whether the consideration be expressed or not. *Bk. C. Fear* vs. *Edwards*, 5 Ired, ante ; *Wills* vs. *Williams*, 11 Ired, ante ; Opinion of Ch. Justice ; *Home of the Friendless* vs. *Rouse*, ante.

In some railroad charters it is stipulated that in case of invasion or insurrection, troops of the State shall he transported free of charge, as in charter of R. and G. R. R. Co., act of 1852, s. 9. This is manifestly a consideration for the franchise, though not set forth in words. The works and services required to be done by the stockholders are always deemed to be undertaken in consideration of the promises made by the State ; and in determining the meaning of the mutual obligations of each, the same rules of construction ought to apply. Such rules are applied in *Bank of Cape Fear* vs. *Edwards ; Attorney Gen.* vs. *Bank of Charlotte* ; *State Bank of Ohio* vs. *Knoop*, by Taney, Chief Justice, ~~in life ; and T. Co~~. vs. *Debolt ;* in *Gordon* vs. *Appeal Tax Court*. Every consideration given by the State is intended to secure a public benefit ; and the State is entitled to have such benefits substantially rendered, and not merely technically performed. On the other hand the stockholders who are induced by the considerations offered to them, to invest capital and secure these public benefits, ought to be fairly dealt by and protected in their bargains. *This is the only means whereby the sovereign can preserve its honor, or, in time of need, command the wealth of the people.*

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7. If the grant of exemption from taxation was intended to induce capital to create those public benefits which the State cannot otherwise establish, save by taxation, what is more reasonable than that while the capital thus invested relieves the public from being taxed, the capital itself should be relieved.

8. The general policy of the times long had been, and

was when the charter of the W. and Weldon Railroad Company was granted, to wit, in 1833; and also when the original charter of the Raleigh and Gaston Railroad Company was enacted, to wit, in 1835, to entice and enlist private wealth by such exemptions in these enterprizes which were highly favored by the public, while in others less favored, no exemptions were offered. Hence the diversity in the charters granted in different companies and at different times.

It is believed that it will be not uninstructive to the court to present, by example, a general view of the charters granted during the different years previous and up to, and inclusive of, the years 1850 and 1852, as tending to show that the legislature intended, and the shareholders accepted, the clauses of exemption whenever they were inserted, as substantial and inviolable contracts between the State and the companies formed under the charters, and were inserted in order to enlist capital by the valuable considerations so carefully offered. They are presented in the appendix to this brief, and run from 1790 to 1860. (Here read appendix.)

Upon reading the exhibits it will be impossible to suppose that the grantors of the charters did not intend something binding between the public and the parties, upon the basis of irrepealable and inviolable contracts, by provisions so explicitly and carefully inserted in some of the charters, and altogether omitted or varied in others, during a period of seventy years.

The Wilmington and Weldon Railroad Company have run their road for the third of a century, and never declared a dividend, and is not likely to do so in thirty years more. During this long period the public has had the full benefit of the work without taxation. The only sufferers are the capitalists, whose stock now bears a loss of sixty per cent., and is still further depressed by the unexpected burthen of a tax.

This company, chartered under the name and style of the "Wilmington and Raleigh Railroad Company," in 1833, subscribed its stock upon the following terms contained in section 19 of the charter, to wit: "It shall and may be lawful for the said president and directors to determine from time to time what instalments shall be paid on the stock subscribed; to purchase with the funds of the company, and place on the said railroad constructed by them, all machines, wagons, vehicles, carriages and teams of any description whatsoever which may be deemed necessary for the purposes of transportation; and all the property purchased by the said president and directors, and that which may be given to the company, and the works constructed under the authority of this act, and all profits accruing on the said works and the said property shall he vested in the respective shareholders of the company and their successors and assigns forever, in proportion to their respective shares; and the shares shall be deemed personal property; and the property of said company and the shares therein shall be exempt from any public charge or tax whatsoever."

Unless the provisions of exemption be wholly rejected, the tax imposed is in violation of the charter. It declares that "the property of said company and the shares therein shall be exempt from any public charge or tax whatever," after having before declared that all the property purchased by the company "or given" to it, "and the works" constructed by virtue of the charter, and all profits accruing on said works and the said company shall be vested in the respective shareholders of the company.

Whatever is the *property of the company*, or constitutes the *shares* of the shareholders, is included in the exemption. It is declared that the share of the shareholder shall embrace the property *purchased*, the property *given*, the *works* and the *profits*.

It is no argument to say that the exemption is against public policy ; that is a matter of speculation in each case. If the public needed the railroad, and instead of collecting taxes to build it procured citizens to build it, and paid them by exemption from tax, *this is substantially building it by taxation.*

Nor is it any argument to say that if built by such means the taxation is unequal, for by the State constitution of 1776 the State was under no obligation to raise tax by an *ad valorem* rule. It might have levied the whole tax from property or poll, from real estate or personal estate. *Taylor* vs. *Commissioners of Newbern*, 2 Jo. Eq.. 141 at 145, et seq., (N. C.) There was no *ad valorem* constitutional rule for taxation till after the year 1868.

Besides, even if the exemption from taxation were an "exclusive or separate emolument or privilege," it is given in consideration of public services ; "the grant of them is matter of legislative and judicial enquiry." *Yadkin Nav. Co.* vs. *Benton*, 2 Hawks, 10 ; *Davis* vs. *R. and G. R. R. Co.*, 2 D. and B., 451.

Such considerations are recognized by the constitutions of 1776, s. 3, and 1868, s. 7, Declaration of Rights.

The foregoing argument embraces the case of both companies. It is complete as to the Wilmington and Weldon R. R. Co. But, as the exemption clause of the Raleigh and Gaston R. R. charter is somewhat different, the case of this company will now be considered separately.

Separate argument for Raleigh and Gaston Railroad Company.

The Raleigh and Gaston R. R. Company was first chartered in 1835. In 1839 the entire property of the company was mortgaged to secure a loan made to it by the State. In 1845, by act of 1844, ch. 73, the mortgage was closed by sale, and the State became the purchaser and

sole proprietor. The State was anxious to obtain private aid to conduct and manage the affairs of the road, and at different times offered several charters for that purpose. Every charter, including the first and last, contains a stipulation of exemption from taxation in the most comprehensive terms.

That of 1835 is "all machines, wagons, vehicles, and carriages purchased as aforesaid with the funds of the company, or engaged in the business of transportation on said railroad, and all the works of the said company constructed, or property acquired under the authority of this act, and all profits which shall accrue from the same, shall be vested in the respective stockholders of the company forever, in proportion to their respective shares; and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatsoever for the term of fifteen years, and thereafter the legislature may impose a tax not exceeding twenty-five cents per annum per share on each share of the capital stock, whenever the annual profits thereof shall exceed six per cent."

That of 1848, ch. 82, is the same; that of 1850, ch. 123, § 8, is also, except that it is not taxable till the profits exceed *eight per cent.*; that of 1852, ch. 140, § 8, is the same with that of 1850. Under the last charter it was organized, and now exists.

It will be seen by an analysis of sec. 8 that the exemption from taxation included (1) the said railroad, and all engines, cars, and machinery; (2) and all the works of said company; (3) together with all profits which shall accrue from said company; and (4) it is provided that all the *property* of the company, of every description, shall be vested in said company for the use and benefit of the State as to one-half, and for the use and benefit of the individual stockholders as to the other half, and the whole shall be deemed and held to be personal estate, and be

exempt from any public charge or tax for the term of fifteen years, with power after that time to lay a certain tax whenever the annual profits should exceed eight per cent. *The annual profits have never reached eight per cent.*, and the *declaration* so alleges.

The ordinary rules of ocnstruction determine the meaning of the contract.

The rule that in construing statutes, it is the duty of judges to make such construction as will repress the mischief and advance the remedy, is especially applicable to statutes relating to matters of public utility, as to establishments of charity, educationand public improvements. Magdalen College Case, 11 Coke, 71, *B.*

Affirmatives in statutes that introduce a new rule, imply a negative of all else. Hob., 278. And when a statute limits a thing to be done in a particular mode, it includes a negative of any other mode. Plowd., 206 B.

Affirmative words may imply a negative as strongly as if expressed. Cohen *vs.* Hoff, 2 Tredway, 661.

It is the obvious meaning of the concluding pertion ot this section, that for fifteen years the entire property of the company, as well as half which belongs to the "individual stockholders," as that which belongs to the State, shall be exempt from taxation; no distinction is drawn, or attempted to be drawn, between the properties of the two; the whole is declared to be "personal estate," and the same comprehensive language exempts the whole from any public charge or tax whatsoever.

The clause, which allows taxation after fifteen years, is not absolute, but provisional only. The clear meaning of the entire clause is, 1. No tax whatever shall be levied on any of the property during fifteen years; 2. That thereafter a tax may be laid on the shares of individuals whenever the profits on such shares shall exceed eight per cent; 3. But, although the profits shall exceed eight per cent.,

such tax shall not exceed twenty-five cents on the share.

If this be not the true construction of the provision, it contains no exemption, even during the fifteen years, from any class of taxation, whether laid on the capital, franchise, works, or property, shares or profits. The meaning conveyed to the citizen, is that individuals shall be equally exempt with the State from all taxation during fifteen years, no matter how great may be the profits; but after that time the State may tax the *share* of individuals when the profits of the share shall exceed eight per cent.

This construction, which confines the tax to the share and exempts that unless it yields profits, is a substantial temptation to the enlistment of capital, and any device of construction which subjects an unproductive franchise, or property, or works, or dead capital to taxation, unfolds a deceptious promise.

It is worthy of note, that where any tax affecting the person who shall have contributed the capitol, is allowable, such tax is laid on the share and on that *only*, when it shall bring a yearly profit of eight per cent. The object of this provision is obvious; it is to exempt the unproductive capital of individuals, which has been invested for the public benefit, from any further burthen than loss of interest while it lies unproductive; but so soon as this burthen is removed and the capital becomes productive, then another and a new burthen may be laid. The removal of the first burthen is only clearly shown by a profit on the share, which comes in lieu of the interest on the money lent for the public welfare, The rate of eight per cent., when the legal rate was six only, was intended to lure individual capital into the public services, and compensate probable or possible losses.

CARLISLE & McPHERSON,
B. F. MOORE,
For Plaintiffs in Error.

WILMINGTON & WELDON R. R. CO.

vs.

JOHN A. REID.

RALEIGH & GASTON R. R. CO.

vs.

JOHN A. REID.

Cases pending in the Supreme Court of the United States, removed thither from the Supreme Court of the State of North Carolina by Writs of Error.

In the trial of the above cases, it is agreed by Messrs. Phillips & Merrimon and Kemp P. Battle, Esqs., counsel for John A. Reid, representing the Treasurer of North Carolina, and B. F. Moore, Esq., counsel for the Rail Road Companies, that the following sheets, printed under the title of "Appendix referred to," &c., may be read as being orrecct Extracts from the several charters granted by the General Assembly of North Carolina, without producing other evidence thereof.

Kemp P. Battle

Attorney for John A. Reid, representing the Treasurer of the State.

B. F. Moore

Attorney for the Companies.

Kemp P. Battle

APPENDIX.

APPENDIX REFERRED TO ON PAGE —— OF THE BRIEF SHOWING THE CHARACTER OF CHARTERS WITH AND WITHOUT SPECIAL PRIVILEGES CONSTITUTING PARTS OF SAID CHARTERS, FROM 1790 TO 1860.

Dismal Swamp Canal Company, chartered in 1790, (2 *Rev. Stat., p.* 217, *sec.* 8.) "For and in consideration of the expenses the said proprietors will be at, not only in cutting the said canal, erecting locks, making causeways, and performing other works necessary, for this navigation but in maintaining and keeping the same in repair, the said canals, locks, causeways and other works, with all their profits, shall be, and the same are hereby vested in the said proprietors, their heirs and assigns forever, as tenants in common, in proportion to their respective shares; and the same shall be deemed real estate, and exempt forever from the payment of any tax, imposition or assessment whatsoever."

In 1796, *by the "act to improve the navigation of Cape Fear river, and of Deep and Haw river,"* (2 *Rev. Stat., p.* 263, *sec.* 7.) "That for the expenses the company must incur in cutting canals, erecting locks, making roads, and doing various things necessary for this navigation, the said canals, locks, roads and every work and thing appertaining to the said navigation, with all the profits arising from the same or any part thereof, shall be and they are vested in the said company, their heirs and assigns for ninety-nine years as tenants in common in proportion to their respective shares, and the same shall be deemed real estate, and shall be exempt from the payment of taxes, imposition or assessment."

In 1812, *by the act to incorporate the Roanoke Navigation Company,* (2 *Rev. Stat. p.* 236, *sec.* 8.) "That for and in consideration of the expenses the said proprietors will be at, not only in cutting canals, erecting locks, and performing other works necessary for the navigation, but in maintaining and keeping the same in

repair; the said canals, locks, and every other work and thing appertaining to the said navigation, with all the profits arising from the same or any part thereof, shall be and they are hereby vested in the said proprietors, their heirs and assigns forever, as tenants in common in proportion to their respective shares; and the same shall be exempt from the payment of any tax, imposition or assessment whatsoever."

In 1834, *by an "act to incorporate the Buncombe Turnpike Company"* (2 *Rev. Stat., p.* 418, *sec.* 7.) "As a compensation to the said Stockholders for the trouble they will bestow on said undertaking, and the expenses they will disburse in contributing and keeping said road in repair, and erecting gates and other necessary works, the profits of the said road are vested in them, their executors and assigns, as tenants in common, for the term of thirty-six years ...., and the same shall be exempt from the payment of any tax whatever."

In 1832, *by "an act to incorporate the Portsmouth and Roanoke Railroad Company,"* &c., (2 *Rev. Stat., p.* 317.) "The said President and Directors shall have power to purchase with the funds of the said Company and place on the said Rail Road all machines, wagons, vehicles, carriages, and teams of any description whatsoever, which they may deem necessary and proper for the purposes of transportation.

"All machines, wagons and vehicles purchased as aforesaid, and the works constructed under the authority of this act, and all profits which shall accrue from the same, shall be vested in the respective shareholders of the Company forever in proportion to their respective shares, and the same shall be personal estate, and shall be exempt from any public charge or tax whatever."

In 1835, *by "an act to incorporate the Cincinnati and Charleston Rail Road Company,"* (2 *Rev. Stat., p.* 403, *sec.* 43.) "The capital stock in the said Company, the dividends thereon and all the property and estates, real personal, belonging to the said Company, shall be forever exempt from taxation in each and every of the said States of South Carolina, North Carolina, Tennessee and Kentucky, and it shall not be lawful for either of the said States, or any corporate municipal police, or other authority thereof, or of any town, city, county or district thereof, to impose any tax on such stock or dividends, property or estates: *Provided*, That the said stock or dividends, when the said dividends shall exceed the legal interest of

the State, may be subject to taxation by the State, in common with other money at interest and interest thereon."

In 1835, *by an "act to incorporate the Raleigh and Gaston Rail Road Company"* (2 *Rev. Stat.* 290, *sec.* 25.) "All machines, wagons, vehicles and carriages purchased as aforesaid, with the funds of the company or engaged in the business of transportation on said Rail Boad and all the works of the said company constructed or property acquired under the authority of this act, and all profits which shall accrue from the same, shall be vested in the respective Stockholders forever in proportion to their respective shares; and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatsoever for the term of fifteen years; and thereafter the Legislature may impose a tax of, not exceeding twenty-five cents per annum per share, on each share of the capital stock, whenever the annual profits thereof shall exceed six per cent."

In 1835, *by "an act to incorporate the Roanoke, Danville and Junction Rail Road Company,"* (*Rev. Stat, p.* 381, *sec.* 13, 1835.) "All machines, wagons, vehicles and carriages, purchased as aforesaid, with the funds of the company, and all their works constructed under the authority of this act, and all profits which shall accrue from the same, shall be vested in the respective Stockholders of the company forever, in proportion to their respective shares, and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatsoever."

In 1836, *by "an act to incorporate the Norfolk and Edenton Rail Road Company"* (2 *Rev. Stat, p.* 370, *sec.* 11.) "All machines, wagons, vehicles and carriages purchased as aforesaid by the funds of the company or engaged in the business of transportation on said Rail Road, and all the works of the said company constructed, or property acquired under the authority of this act, and all profits which shall accrue from the same, shall be vested in the company of the respective Stockholders forever, in proportion to their respective shares; and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatsoever, for the term of fifteen years; and thereafter the Legislature may impose a tax not exceeding twelve and one half cents per annum, per share, on each share of the capital stock, whenever the annual profits thereof shall exceed six per cent.

In 1836, *by "an act to amend the Charter of the Cape Fear, Yadkin and Pee Dee Rail Road Company,"* (*act of* 1836, *ch.* 44,

sec. 12.) All the property owned by said company shall be deemed and held as personal estate, and shall not be subject to taxation for fifteen years from the passage of this act; after which time whenever the net profits of the said company shall exceed six per cent, per annum, the General Asssembly of this State may impose a tax, not exceeding twenty-five cents per share, on each share of the capital stock of the said Company."

In 1836, *by* "*an act to incorporate the North Carolina Rail Road Company*," (*act of* 1836, *p.* 25, *ch.* 47, *sec.* 14.) "All machines, wagons, vehicles, boats, carriages, and all other personal property, purchased by said company, or works constructed under the authority of this act, and all profits which shall accrue from the same, shall be vested in the respective shareholders of the company forever, in proportion to their respective shares, and the said shares shall be deemed personal estate, and the property of the said company, and the shares therein, shall be exempt from any public charge or tax whatsoever for the term of fifteen years; and thereafter the General Assembly may impose a tax not exceeding twenty-five cents per share, per annum, on the capital stock of the said company, whenever the net profits thereof shall exceed six per cent per annum."

In 1836, *by* "*an act to charter the Raleigh and Columbia Rail Road Company*, (2 *Rev. Stat. p.* 358, *sec.* 27.) "All machines, wagons, vehicles and carriages purchased as aforesaid with the funds of the company or engaged in the business of transportation on said Rail Road; and all the works constructed, or property acquired under the authority of this act, and all profits which shall accrue from the same, shall be vested in the respective stockholders of the company forever, in proportion to their respective shares; and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatsoever for the term of fifteen years. And thereafter the Legislature may impose a tax not exceeding twenty-five cents per annum on each share of the capital stock, whenever the annual profits thereof shall exceed six per cent."

In 1838, *by* "*an act to incorporate the Weldon Rail Road Company.*" (*Acts of* 1838, *p.* 47, *ch.* 30, *sec.* 27. "All machines, wagons, vehicles and carriages, purchased as aforesaid with the funds of the Company, or engaged in the business of transportation on said Rail Road, and all the works of said Company constructed, or property acquired under the authority of this act, and all profits which shall accrue from the same shall be vested in the respective

Stockholders of the Company forever, in the proportion of their respective shares, and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatever."

In 1846 *by "an act to incorporate the North and South Carolina Rail Road Company,"* (*Acts of* 1846, *ch.* 81, 528, *p.* 161.) "All machines, wagons, vehicles and carriages, purchased as aforesaid with the funds of the Company, or engaged in the business of transportation on said Rail Road, and all the works of said Company constructed, or property acquired under the authority of this act, and all property which shall accrue from the same shall be vested in the respective Stockholders of the Company forever, in proportion to their respective shares; and the same shall be deemed personal estate, and shall be exempt from any public charge, or tax whatever, for the term of fifteen years, and thereafter the Legislature may impose a tax not exceeding twenty-five cents per annum, on each share of the capital stock whenever the annual profits thereof shall exceed six per cent."

In 1846, *by an act incorporating "the Charlotte and South Carolina Rail Road Company," ratified 2d January*, 1847, (*chap.* 84, *p.* 109,) it was provided by sec. 35 that the capital stock, dividends and all the property, real and personal, of said Company should be exempt from taxation for fifteen years, and after that time it might be taxed under certain limits."

In same year, "the Roanoke Rail Road Company" was chartered (ch. 87, p. 200,) and by sec. 20 the Company was exempt from all tax whatsoever for fifteen years, and thereafter subject to tax when its profits exceeded six per cent.

In same year, (*ch.* 82, *sec.* 26. *p.* 175 *of acts of* 1846.) "The Wilmington and Manchester Rail Road Company" was chartered with a clause in the very language of many other charters in regard to the character of the property in the shares; but *exemption from taxation was carefully avoided.*

In same year was incorporated "Jonathan's Creek and Tennessee Mountain Turnpike Company" (*ch.* 90, *p.* 216,) *without exemption from taxation.*

In same year was incorporated "The Caldwell and Ashe Turnpike Company" (*ch.* 105, *p.* 231,) *without exemption from taxation.*

In 1848 (*ch.* 82, *p.* 138,) *was incorporated the North Carolina Rail Road Company without any exemption from tax.*

In same year (*ch.* 89, *p.* 183,) *the Fayetteville and Western Plank Road Company was incorporated without any exemption from taxation.*

In 1850 (*ch.* 82, *p.* 179.) A charter was granted to improve the Deep River and the Yadkin River by stock subscribed. And by sec. 24 it was provided that "all the property and works and profits of said Company should be exempt from taxation for fifteen years; and thereafter a tax might be imposed not exceeding twenty-five cents per annum on each share of the stock whenever the annual profits should exceed six per cent."

In same year (1850) (*ch.* 112, *p.* 213) a charter was granted to "the *Neuse River Navigation Company*" *without any exemption from taxation, but with the power to regulate the tolls so as to net twenty per cent. per annum.*

In same year (1850) (*ch.* 115, *p.* 223,) *a charter was granted to the Yadkin Navigation Company,*" with a clause of exemption (sec. 26) as follows: "Said Company and all its works shall be exempt from taxation for fifteen years, and thereafter a tax not exceeding twenty-five cents per annum may be imposed upon the shares.

In same year (1850) (*ch.* 124, *p.* 258,) "*The Tennessee River Rail Road Company*" *was chartered. There was no exemption from tax; but the officers, by sec.* 25, *were exempted from* "*working on public roads and performance of military duty.*"

In same year (1850, *ch.* 127, *p.* 268,) *the* "*Newbern and Central Rail Road Company*" was chartered. *The same limited provisions in regard to exemptions by sec.* 35, *were made in this as in the charter of the* "*Tennessee River Rail Road Company.*"

At the same session (1850, *ch.* 132, *p.* 286,) "*the Roanoke Valley Rail Road Company*" was chartered: And by sec. 24 an exemption from tax in all respects in principle similar to that of the Raleigh and Gaston Rail Road Company was provided.

At the same session (1850, *ch.* 136, *p.* 314,) "*The Fayetteville and Western Plank Road Company*" was chartered. In the charter there is *no exemption from tax or any public duties.*

At the same session (1850, *ch.* 137, *p.* 321,) *The Raleigh and Summerville Plank Road Company* was chartered *without exemptions.*

Other Plank Road Companies were chartered during the same session, *without any provision for exemption from tax*, as "the

Wilmington and Topsail Sound Plank Rail Road Company;" "the Fayetteville and Northern Plank Rail Road Company;" "the Greenville and Raleigh Plank Rail Road Company;" "the Concord and Taylorsville Plank Road Company," and about a dozen others.

At the session of 1852, (*ch.* 136, *p.* 484,) "*the Atlantic and North Carolina Rail Road Company*," and the "*North Carolina and Western Rail Road Company*" were chartered *without any exemption from taxation.*

At the same session, (*ch.* 147, *p.* 560, was incorporated the "*Western Rail Road Company*," *without any exemption from taxation.*

With this session of the General Assembly ended all exemptions of incorporations from taxation by the State.

Many rail road corporations were created in 1854, 1856, 1858, and in subsequent years, but no exemption clause from taxation exists in any of them.

In 1854, "*the Wilmington and Charlotte Rail Road Company*," (*ch.* 225;) "*the Atlantic Tennessee and Ohio Rail Road Company*, (*ch.* 227;) "*the Western North Carolina Rail Road Company*," (*ch.* 228;) "*the Greenville and French Broad Rail Road Company*, (*ch.* 229;) "*tye Chatham Rail Read Company*," (*ch.* 230,) and sundry other Rail Road Companies, *and in none of them was there any provision for exemption from taxation.*

At the session of 1856 "*the Albemarle and Suffolk Rail Road Company*," (*ch.* 69;) "*the Mountain Rail Road Company*," (*ch.* 70;) "*the Salem and Germanton Rail Road Company*," (*ch.* 73;" "*the Garysburg and Weldon Rail Road Company*," (*ch.* 75.)

Notwithstanding the favorable terms offered to capitalists in so many cases, yet only two of the charters for rail roads enacted prior to 1848 were accepted and operated, namely: "the Wilmington and Weldon," (originally chartered, by the name of the Wilmington and Raleigh Rail Road Company,) and the Raleigh and Gaston Rail Road Company. All the other charters with exemption clauses became extinct, because there was no organization under them within the time limited by the charters.

The same policy was pursued towards Banks with equally marked discriminations between the various charters.

Thus in 1804, fourteen years after the charter of the *Dismal swamp Canal Company* with its exemptions (2 *Rev. Stat. p.* 37.) "The Banks of Cape Fear and the "Bank of Newbern" were chartered without any exemption from, or limit to taxation.

These were the first Banks ever chartered by the State.

In 1814, (2 *Rev. Stat. p.* 42.) The charters were continued till 1835, not only without exemption from taxation, but taxes were expressly imposed.

In 1810 "*the State Bank of North Carolina*" was chartered without the imposition of any tax whatever.

In 1833, the Charter of the Bank of Cape Fear was continued till 1855, with a provision as to taxation. in section 11, as follows: "A tax of twenty-five cents on each share of stock owned by individuals shall be annually paid into the Treasury of the State, by the President or Cashier of said Bank, and the said Bank shall not be liable to any *further tax.*

In 1822 (2 *Rev. Stat. p* 57,) the Bank of the State of North Carolina, was chartered to endure till 1860.

By Section 13, it was provided, that "each share owned by individuals shall be subject to an annual tax of twenty-five cents and *no more.*"

In 1834 (2 *Rev. Stat. p* 66,) the Merchants Bank of Newbern" was charterd *without any restrictions as to the extent of taxation.*

No other Bank was chartered till 1846, when by (ch. 4.) "the Commercial Bank of Wilmington" was chartered.

In 1848, (ch. 3,) the "Bank of Fayetteville" was chartered.

In 1850, by (ch's 8 and 13,) the Banks of "Washington," and "of Wadesboro," were chartered.

In 1852, by (ch's 4, 5 and 8,) "the Bank of Charlotte," "the Farmer's Bank of North Carolina," and "the Bank of Yanceyville," were chartered.

In 1854, the Banks of Clarendon (ch. 75,) and Wilmington (ch. 81,) were chartered.

In this year also, (ch. 77,) the Bank of Cape Fear was re-chartered, and the provision for the limited exemption contained in the act of 1833, was not only omitted, but the Bank was expressly subjected to *such tax as might be imposed on the property of persons.*

In 1858, nine new Banks were chartered. (See ch's 67, 68, 69, 70, 71, 72, 73, 74, 75.)

In 1860, three other Banks were also established, (ch s 64, 65 and 66.)

Every Bank charter granted after the year 1833, twenty-three in number, carefully avoided the limitations upon taxation fixed by the charters of the two Banks established in that year.

2 Jones 186

The Wilmington & Weldon Railroad Co.,

Plaintiff in Error,

VS.

JOHN A. REID, Sheriff, &c.

1. It is admitted that a charter of incorporation granted by a State, creates a contract between the State and the corporators, which the State cannot violate. It becomes, then, a matter of importance to ascertain the nature of such a contract, and the number and extent of the rights which are conferred upon the corporation. There are numerous cases on this subject, but it is unnecessary to refer to more than one, as in that such rights are clearly stated and defined. *In the Binghamton Bridge case,* 3 Wallace, at page 75, it is said by the court "that all rights which are asserted against the State must be clearly defined, and not raised by inference or presumption; and if the charter is silent about a power, it does not exist. If on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the State; and where it is susceptible of two meanings, the one restricting and the other extending the powers of the corporation, that construction is to be adopted which works the least harm to the State." See *McKee* v. *W. W. R. R. Co.*, 2 Jones (N. C.) 186.

2. When a corporation claims an exemption from taxation, it must show that the power to tax has been given up by the State in the plainest and most explicit language. The reason is that the taxing power is one of the highest and most important attributes of sovereignty. It is essential to the establishment and continued existence of the government. No government can, then, divest itself altogether, of such a power; it cannot commit political suicide; but it is conceded that it may, by a contract for an adequate consideration, bind itself for a longer or a shorter period, not to exercise its taxing power at all, or not beyond a certain extent, upon certain persons or things. This is, however, often a dangerous restriction upon its power, because the necessities of the government cannot always be foreseen. In the changes and chances of time and things, those who have charge of the administration may have need of all the possible resources of the country to save it from great disaster, if not from ruin. These considerations force upon the mind the propriety, nay the absolute necessity, of the rule that every grant from the Legislature,

by which the integrity of the power to raise revenue is impaired, must be construed strictly in favor of the public and against the grantee. *State* v. *Petway*, 2 Jones Eq. (N. C.) Rep. 396. *Bank of Pennsylvania* v. *Commonwealth*, 19 Pennsylvania Rep. 144. *Lord Middleton* v. *Lambert*, 1 Adol & Ellis, 401. *Cooley on Consti. Lim.* 280, et seq. *Christ Church*, Philadelphia, v. *County of Philadelphia*, 24 Howard, 300.

3. The *franchise* is something entirely distinct from the *property* of the corporation, and the distinction is clearly recognized by law. *State* v. *Rives*, 5 Ired, (N. C.) Rep., 297—Rev. Code of 1856, ch. 26, Secs. from 5 to 10. *State* v. *Petway*, 2 Jones, Eq. (N. C.) Rep. 396. *Attorney General* v. *Bank of Charlotte*, 4 Jones, Eq. (N. C.) Rep. 287.

In this case the tax is upon the *franchise* ~~and not upon the stock owned by the stockholders, nor upon the property of the corporation.~~ The exemption extends only to the property, leaving the franchise or body politic itself liable to be taxed, just as an individual might have his property exempt while the State might, (where there was no constitutional restriction) tax his poll *ad libitum*. See *Union Bank of Tennessee* v. *State*, 9 Yerg. Rep., 490. Nothing less than the exemption of the franchise and all the property, real and personal, of a corporation, from taxation can or ought to relieve it from the burden of contributing its just proportion towards the support of the government. See *Home of the Friendless* v. *Rouse*, 8 Wallace, 430. *The Washington University* v. *Rouse*, Ib. 439.

Will: H. Battle

No. 297.

The Wilmington & Weldon R. R. Co.

Plaintiff in Error,

VS.

JNO. A. REID, Sheriff, &c.,

Def't in Error.

The Wilmington & Weldon Railroad Co.,

Plaintiff in Error,

VS.

JOHN A. REID, Sheriff, &c.

1. It is admitted that a charter of incorporation granted by a State, creates a contract between the State and the corporators, which the State cannot violate. It becomes, then, a matter of importance to ascertain the nature of such a contract, and the number and extent of the rights which are conferred upon the corporation. There are numerous cases on this subject, but it is unnecessary to refer to more than one, as in that such rights are clearly stated and defined. *In the Binghamton Bridge case*, 3 Wallace, at page 75, it is said by the court "that all rights which are asserted against the State must be clearly defined, and not raised by inference or presumption; and if the charter is silent about a power, it does not exist. If on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the State; and where it is susceptible of two meanings, the one restricting and the other extending the powers of the corporation, that construction is to be adopted which works the least harm to the State." See *McKee* v. *W. W. R. R. Co.*, 2 Jones (N. C.) 186.

2. When a corporation claims an exemption from taxation, it must show that the power to tax has been given up by the State in the plainest and most explicit language. The reason is that the taxing power is one of the highest and most important attributes of sovereignty. It is essential to the establishment and continued existence of the government. No government can, then, divest itself altogether, of such a power; it cannot commit political suicide; but it is conceded that it may, by a contract for an adequate consideration, bind itself for a longer or a shorter period, not to exercise its taxing power at all, or not beyond a certain extent, upon certain persons or things. This is, however, often a dangerous restriction upon its power, because the necessities of the government cannot always be foreseen. In the changes and chances of time and things, those who have charge of the administration may have need of all the possible resources of the country to save it from great disaster, if not from ruin. These considerations force upon the mind the propriety, nay the absolute necessity, of the rule that every grant from the Legislature,

by which the integrity of the power to raise revenue is impaired, must be construed strictly in favor of the public and against the grantee. *State* v. *Petway*, 2 Jones Eq. (N. C.) Rep. 396. *Bank of Pennsylvania* v. *Commonwealth*, 19 Pennsylvania Rep. 144. *Lord Middleton* v. *Lambert*, 1 Adol & Ellis, 401. *Cooley on Consti. Lim.* 280, et seq. *Christ Church*, Philadelphia, v. *County of Philadelphia*, 24 Howard, 300.

3. The *franchise* is something entirely distinct from the *property* of the corporation, and the distinction is clearly recognized by law. *State* v. *Rives*, 5 Ired, (N. C.) Rep., 297—Rev. Code of 1856, ch. 26, Secs. from 5 to 10. *State* v. *Petway*, 2 Jones. Eq. (N. C.) Rep. 396. *Attorney General* v. *Bank of Charlotte*, 4 Jones, Eq. (N. C.) Rep. 287.

In this case the tax is upon the *franchise* ~~and not upon the stock owned by the stockholders, nor upon the property of the corporation.~~ The exemption extends only to the property, leaving the franchise or body politic itself liable to be taxed, just as an individual might have his property exempt while the State might, (where there was no constitutional restriction) tax his poll *ad libitum*. See *Union Bank of Tennessee* v. *State*, 9 Yerg. Rep.. 490. Nothing less than the exemption of the franchise and all the property, real and personal, of a corporation, from taxation can or ought to relieve it from the burden of contributing its just proportion towards the support of the government. See *Home of the Friendless* v. *Rouse*, 8 Wallace, 430. *The Washington University* v. *Rouse*, Ib. 439.

Wm. H. Battle

No. 297.

The Wilmington & Weldon R. R. Co.

Plaintiff in Error,

VS.

JNO. A. REID, Sheriff, &c.,

Def't in Error.

WM. H. BATTLE,

Counsel for Def't.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. [redacted] 701

DAVID GIBSON, FOR HIMSELF, AND THOMAS G. GAYLORD, BENJAMIN B. GAYLORD, JARED B. GREEN, CHARLES S. GREEN, WILLIAM ELDEN, AND WILLIAM CALCORD, PARTNERS, AS GAYLORD, SON AND COMPANY, APPELLANTS,

vs.

AMERICUS WARDEN AND AUGUSTUS S. LUDLOW.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED NOVEMBER 18, 1870.